



Sen. Terry Link

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1 AMENDMENT TO SENATE BILL 451

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 451 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Cigarette Tax Act is amended by changing  
5 Sections 1, 3, 3-10, 4, 4b, 4d, 9c, 18, 18a, 18b, 18c, 20, and  
6 24 and by adding Section 28a as follows:

7 (35 ILCS 130/1) (from Ch. 120, par. 453.1)

8 Sec. 1. For the purposes of this Act:

9 "Brand Style" means a variety of cigarettes distinguished  
10 by the tobacco used, tar and nicotine content, flavoring used,  
11 size of the cigarette, filtration on the cigarette or  
12 packaging.

13 "Cigarette", means any roll for smoking made wholly or in  
14 part of tobacco irrespective of size or shape and whether or  
15 not such tobacco is flavored, adulterated or mixed with any  
16 other ingredient, and the wrapper or cover of which is made of

1 paper or any other substance or material except tobacco.

2 "Contraband cigarettes" means:

3 (a) cigarettes that do not bear a required tax stamp  
4 under this Act;

5 (b) cigarettes for which any required federal taxes  
6 have not been paid;

7 (c) cigarettes that bear a counterfeit tax stamp;

8 (d) cigarettes that are manufactured, fabricated,  
9 assembled, processed, packaged, or labeled by any person  
10 other than (i) the owner of the trademark rights in the  
11 cigarette brand or (ii) a person that is directly or  
12 indirectly authorized by such owner;

13 (e) cigarettes imported into the United States, or  
14 otherwise distributed, in violation of the federal  
15 Imported Cigarette Compliance Act of 2000 (Title IV of  
16 Public Law 106-476); ~~or~~

17 (f) cigarettes that have false manufacturing labels; ~~or~~

18 (g) cigarettes identified in Section 3-10(a)(1) of this  
19 Act; or

20 (h) cigarettes that are improperly tax stamped,  
21 including cigarettes that bear a tax stamp of another state  
22 or taxing jurisdiction.

23 "Person" means any natural individual, firm, partnership,  
24 association, joint stock company, joint adventure, public or  
25 private corporation, however formed, limited liability  
26 company, or a receiver, executor, administrator, trustee,

1 guardian or other representative appointed by order of any  
2 court.

3 "Prior Continuous Compliance Taxpayer" means any person  
4 who is licensed under this Act and who, having been a licensee  
5 for a continuous period of 5 years, is determined by the  
6 Department not to have been either delinquent or deficient in  
7 the payment of tax liability during that period or otherwise in  
8 violation of this Act. Also, any taxpayer who has, as verified  
9 by the Department, continuously complied with the condition of  
10 his bond or other security under provisions of this Act for a  
11 period of 5 consecutive years shall be considered to be a  
12 "Prior continuous compliance taxpayer". In calculating the  
13 consecutive period of time described herein for qualification  
14 as a "prior continuous compliance taxpayer", a consecutive  
15 period of time of qualifying compliance immediately prior to  
16 the effective date of this amendatory Act of 1987 shall be  
17 credited to any licensee who became licensed on or before the  
18 effective date of this amendatory Act of 1987.

19 "Department" means the Department of Revenue.

20 "Sale" means any transfer, exchange or barter in any manner  
21 or by any means whatsoever for a consideration, and includes  
22 and means all sales made by any person.

23 "Original Package" means the individual packet, box or  
24 other container whatsoever used to contain and to convey  
25 cigarettes to the consumer.

26 "Distributor" means any and each of the following:

1           (1) Any person engaged in the business of selling  
2 cigarettes in this State who brings or causes to be brought  
3 into this State from without this State any original packages  
4 of cigarettes, on which original packages there is no  
5 authorized evidence underneath a sealed transparent wrapper  
6 showing that the tax liability imposed by this Act has been  
7 paid or assumed by the out-of-State seller of such cigarettes,  
8 for sale or other disposition in the course of such business.

9           (2) Any person who makes, manufactures or fabricates  
10 cigarettes in this State for sale in this State, except a  
11 person who makes, manufactures or fabricates cigarettes as a  
12 part of a correctional industries program for sale to residents  
13 incarcerated in penal institutions or resident patients of a  
14 State-operated mental health facility.

15           (3) Any person who makes, manufactures or fabricates  
16 cigarettes outside this State, which cigarettes are placed in  
17 original packages contained in sealed transparent wrappers,  
18 for delivery or shipment into this State, and who elects to  
19 qualify and is accepted by the Department as a distributor  
20 under Section 4b of this Act.

21           "Place of business" shall mean and include any place where  
22 cigarettes are sold or where cigarettes are manufactured,  
23 stored or kept for the purpose of sale or consumption,  
24 including any vessel, vehicle, airplane, train or vending  
25 machine.

26           "Business" means any trade, occupation, activity or

1 enterprise engaged in for the purpose of selling cigarettes in  
2 this State.

3 "Retailer" means any person who engages in the making of  
4 transfers of the ownership of, or title to, cigarettes to a  
5 purchaser for use or consumption and not for resale in any  
6 form, for a valuable consideration. "Retailer" does not include  
7 a person:

8 (1) who transfers to residents incarcerated in penal  
9 institutions or resident patients of a State-operated  
10 mental health facility ownership of cigarettes made,  
11 manufactured, or fabricated as part of a correctional  
12 industries program; or

13 (2) who transfers cigarettes to a not-for-profit  
14 research institution that conducts tests concerning the  
15 health effects of tobacco products and who does not offer  
16 the cigarettes for resale.

17 "Retailer" shall be construed to include any person who  
18 engages in the making of transfers of the ownership of, or  
19 title to, cigarettes to a purchaser, for use or consumption by  
20 any other person to whom such purchaser may transfer the  
21 cigarettes without a valuable consideration, except a person  
22 who transfers to residents incarcerated in penal institutions  
23 or resident patients of a State-operated mental health facility  
24 ownership of cigarettes made, manufactured or fabricated as  
25 part of a correctional industries program.

26 "Stamp" or "stamps" mean the indicia required to be affixed

1 on a pack of cigarettes that evidence payment of the tax on  
2 cigarettes under Section 2 of this Act ~~(35 ILCS 130/2), or the~~  
3 ~~indicia used to indicate that the cigarettes are intended for a~~  
4 ~~sale or distribution within this State that is exempt from~~  
5 ~~State tax under any applicable provision of law.~~

6 ~~"Within this State" means within the exterior limits of the~~  
7 ~~State of Illinois and includes all territory within these~~  
8 ~~limits owned by or ceded to the United States of America.~~

9 "Related party" means any person that is associated with  
10 any other person because he or she:

11 (a) is an officer or director of a business; or

12 (b) is legally recognized as a partner in business. +

13 ~~or~~

14 ~~(c) is directly or indirectly controlled by another.~~

15 (Source: P.A. 95-462, eff. 8-27-07; 95-1053, eff. 1-1-10.)

16 (35 ILCS 130/3) (from Ch. 120, par. 453.3)

17 Sec. 3. Affixing tax stamp; remitting tax to the  
18 Department. Payment of the taxes imposed by Section 2 of this  
19 Act shall (except as hereinafter provided) be evidenced by  
20 revenue tax stamps affixed to each original package of  
21 cigarettes. Each distributor of cigarettes, before delivering  
22 or causing to be delivered any original package of cigarettes  
23 in this State to a purchaser, shall firmly affix a proper stamp  
24 or stamps to each such package, or (in case of manufacturers of  
25 cigarettes in original packages which are contained inside a

1 sealed transparent wrapper) shall imprint the required  
2 language on the original package of cigarettes beneath such  
3 outside wrapper, as hereinafter provided. ~~Any stamp required by~~  
4 ~~this Act shall note whether the State tax under Section 2 of~~  
5 ~~this Act (35 ILCS 130/2) was paid.~~

6 No stamp or imprint may be affixed to, or made upon, any  
7 package of cigarettes unless that package complies with all  
8 requirements of the federal Cigarette Labeling and Advertising  
9 Act, 15 U.S.C. 1331 and following, for the placement of labels,  
10 warnings, or any other information upon a package of cigarettes  
11 that is sold within the United States. Under the authority of  
12 Section 6, the Department shall revoke the license of any  
13 distributor that is determined to have violated this paragraph.  
14 A person may not affix a stamp on a package of cigarettes,  
15 cigarette papers, wrappers, or tubes if that individual package  
16 has been marked for export outside the United States with a  
17 label or notice in compliance with Section 290.185 of Title 27  
18 of the Code of Federal Regulations. It is not a defense to a  
19 proceeding for violation of this paragraph that the label or  
20 notice has been removed, mutilated, obliterated, or altered in  
21 any manner.

22 Only distributors licensed under this Act and  
23 transporters, as defined in Section 9c of this Act, may possess  
24 ~~or out-of-state manufacturers holding a permit under this Act~~  
25 ~~may receive~~ unstamped original packages ~~packs~~ of cigarettes.  
26 Prior to shipment to an Illinois retailer, a stamp shall be

1 applied to each original package of cigarettes sold to the  
2 retailer. A distributor may apply tax stamps only to original  
3 packages of cigarettes purchased or obtained directly from an  
4 in-state maker, manufacturer, or fabricator licensed as a  
5 distributor under Section 4 of this Act or an out-of-state  
6 maker, manufacturer, or fabricator holding a permit under  
7 Section 4b of this Act. A ~~another person, each licensed~~  
8 distributor or out of state manufacturer holding a permit  
9 shall apply a stamp to each pack of cigarettes imported,  
10 distributed, or sold whether or not such cigarettes are subject  
11 to State tax under Section 2 of this Act (35 ILCS 130/2) or any  
12 other provision of State law, provided that a distributor or  
13 out-of-state manufacturer may only apply a tax stamp to a pack  
14 of cigarettes purchased or obtained directly from a licensed  
15 distributor or an out of state manufacturer holding a permit.  
16 Only a licensed distributor or an out of state manufacturer  
17 holding a permit may ship or otherwise cause to be delivered  
18 unstamped original packages ~~packs~~ of cigarettes in, into, or  
19 from this State. A ~~, provided that a licensed distributor or an~~  
20 out-of-state manufacturer holding a permit may transport  
21 unstamped original packages ~~packs~~ of cigarettes to a facility,  
22 wherever located, owned or controlled by such distributor;  
23 however, a distributor may not transport unstamped original  
24 packages of cigarettes to a facility where retail sales of  
25 cigarettes take place or ~~manufacturer~~. Any licensed  
26 distributor ~~person~~ that ships or otherwise causes to be

1 delivered unstamped original packages ~~packs~~ of cigarettes  
2 into, within, or from this State shall ensure that the invoice  
3 or equivalent documentation and the bill of lading or freight  
4 bill for the shipment identifies the true name and address of  
5 the consignor ~~cosignor~~ or seller, the true name and address of  
6 the consignee ~~cosignee~~ or purchaser, and the quantity by brand  
7 style of the cigarettes so transported, provided that this  
8 Section shall not be construed as to impose any requirement or  
9 liability upon any common or contract carrier.

10 The Department, or any person authorized by the Department,  
11 shall sell such stamps only to persons holding valid licenses  
12 as distributors under this Act. On and after July 1, 2003,  
13 payment for such stamps must be made by means of electronic  
14 funds transfer. The Department may refuse to sell stamps to any  
15 person who does not comply with the provisions of this Act.  
16 Beginning on the effective date of this amendatory Act of the  
17 92nd General Assembly and through June 30, 2002, persons  
18 holding valid licenses as distributors may purchase cigarette  
19 tax stamps up to an amount equal to 115% of the distributor's  
20 average monthly cigarette tax stamp purchases over the 12  
21 calendar months prior to the effective date of this amendatory  
22 Act of the 92nd General Assembly.

23 Prior to December 1, 1985, the Department shall allow a  
24 distributor 21 days in which to make final payment of the  
25 amount to be paid for such stamps, by allowing the distributor  
26 to make payment for the stamps at the time of purchasing them

1 with a draft which shall be in such form as the Department  
2 prescribes, and which shall be payable within 21 days  
3 thereafter: Provided that such distributor has filed with the  
4 Department, and has received the Department's approval of, a  
5 bond, which is in addition to the bond required under Section 4  
6 of this Act, payable to the Department in an amount equal to  
7 80% of such distributor's average monthly tax liability to the  
8 Department under this Act during the preceding calendar year or  
9 \$500,000, whichever is less. The Bond shall be joint and  
10 several and shall be in the form of a surety company bond in  
11 such form as the Department prescribes, or it may be in the  
12 form of a bank certificate of deposit or bank letter of credit.  
13 The bond shall be conditioned upon the distributor's payment of  
14 amount of any 21-day draft which the Department accepts from  
15 that distributor for the delivery of stamps to that distributor  
16 under this Act. The distributor's failure to pay any such  
17 draft, when due, shall also make such distributor automatically  
18 liable to the Department for a penalty equal to 25% of the  
19 amount of such draft.

20 On and after December 1, 1985 and until July 1, 2003, the  
21 Department shall allow a distributor 30 days in which to make  
22 final payment of the amount to be paid for such stamps, by  
23 allowing the distributor to make payment for the stamps at the  
24 time of purchasing them with a draft which shall be in such  
25 form as the Department prescribes, and which shall be payable  
26 within 30 days thereafter, and beginning on January 1, 2003 and

1 thereafter, the draft shall be payable by means of electronic  
2 funds transfer: Provided that such distributor has filed with  
3 the Department, and has received the Department's approval of,  
4 a bond, which is in addition to the bond required under Section  
5 4 of this Act, payable to the Department in an amount equal to  
6 150% of such distributor's average monthly tax liability to the  
7 Department under this Act during the preceding calendar year or  
8 \$750,000, whichever is less, except that as to bonds filed on  
9 or after January 1, 1987, such additional bond shall be in an  
10 amount equal to 100% of such distributor's average monthly tax  
11 liability under this Act during the preceding calendar year or  
12 \$750,000, whichever is less. The bond shall be joint and  
13 several and shall be in the form of a surety company bond in  
14 such form as the Department prescribes, or it may be in the  
15 form of a bank certificate of deposit or bank letter of credit.  
16 The bond shall be conditioned upon the distributor's payment of  
17 the amount of any 30-day draft which the Department accepts  
18 from that distributor for the delivery of stamps to that  
19 distributor under this Act. The distributor's failure to pay  
20 any such draft, when due, shall also make such distributor  
21 automatically liable to the Department for a penalty equal to  
22 25% of the amount of such draft.

23 Every prior continuous compliance taxpayer shall be exempt  
24 from all requirements under this Section concerning the  
25 furnishing of such bond, as defined in this Section, as a  
26 condition precedent to his being authorized to engage in the

1 business licensed under this Act. This exemption shall continue  
2 for each such taxpayer until such time as he may be determined  
3 by the Department to be delinquent in the filing of any  
4 returns, or is determined by the Department (either through the  
5 Department's issuance of a final assessment which has become  
6 final under the Act, or by the taxpayer's filing of a return  
7 which admits tax to be due that is not paid) to be delinquent  
8 or deficient in the paying of any tax under this Act, at which  
9 time that taxpayer shall become subject to the bond  
10 requirements of this Section and, as a condition of being  
11 allowed to continue to engage in the business licensed under  
12 this Act, shall be required to furnish bond to the Department  
13 in such form as provided in this Section. Such taxpayer shall  
14 furnish such bond for a period of 2 years, after which, if the  
15 taxpayer has not been delinquent in the filing of any returns,  
16 or delinquent or deficient in the paying of any tax under this  
17 Act, the Department may reinstate such person as a prior  
18 continuance compliance taxpayer. Any taxpayer who fails to pay  
19 an admitted or established liability under this Act may also be  
20 required to post bond or other acceptable security with the  
21 Department guaranteeing the payment of such admitted or  
22 established liability.

23 Any person aggrieved by any decision of the Department  
24 under this Section may, within the time allowed by law, protest  
25 and request a hearing, whereupon the Department shall give  
26 notice and shall hold a hearing in conformity with the

1 provisions of this Act and then issue its final administrative  
2 decision in the matter to such person. In the absence of such a  
3 protest filed within the time allowed by law, the Department's  
4 decision shall become final without any further determination  
5 being made or notice given.

6 The Department shall discharge any surety and shall release  
7 and return any bond or security deposited, assigned, pledged,  
8 or otherwise provided to it by a taxpayer under this Section  
9 within 30 days after:

10 (1) Such taxpayer becomes a prior continuous compliance  
11 taxpayer; or

12 (2) Such taxpayer has ceased to collect receipts on which  
13 he is required to remit tax to the Department, has filed a  
14 final tax return, and has paid to the Department an amount  
15 sufficient to discharge his remaining tax liability as  
16 determined by the Department under this Act. The Department  
17 shall make a final determination of the taxpayer's outstanding  
18 tax liability as expeditiously as possible after his final tax  
19 return has been filed. If the Department cannot make such final  
20 determination within 45 days after receiving the final tax  
21 return, within such period it shall so notify the taxpayer,  
22 stating its reasons therefor.

23 The Department may authorize distributors to affix revenue  
24 tax stamps by imprinting tax meter stamps upon original  
25 packages of cigarettes. The Department shall adopt rules and  
26 regulations relating to the imprinting of such tax meter stamps

1 as will result in payment of the proper taxes as herein  
2 imposed. No distributor may affix revenue tax stamps to  
3 original packages of cigarettes by imprinting tax meter stamps  
4 thereon unless such distributor has first obtained permission  
5 from the Department to employ this method of affixation. The  
6 Department shall regulate the use of tax meters and may, to  
7 assure the proper collection of the taxes imposed by this Act,  
8 revoke or suspend the privilege, theretofore granted by the  
9 Department to any distributor, to imprint tax meter stamps upon  
10 original packages of cigarettes.

11 Illinois cigarette manufacturers who place their  
12 cigarettes in original packages which are contained inside a  
13 sealed transparent wrapper, and similar out-of-State cigarette  
14 manufacturers who elect to qualify and are accepted by the  
15 Department as distributors under Section 4b(a) of this Act,  
16 shall pay the taxes imposed by this Act by remitting the amount  
17 thereof to the Department by the 5th day of each month covering  
18 cigarettes shipped or otherwise delivered in Illinois to  
19 purchasers during the preceding calendar month. Such  
20 manufacturers of cigarettes in original packages which are  
21 contained inside a sealed transparent wrapper, before  
22 delivering such cigarettes or causing such cigarettes to be  
23 delivered in this State to purchasers, shall evidence their  
24 obligation to remit the taxes due with respect to such  
25 cigarettes by imprinting language to be prescribed by the  
26 Department on each original package of such cigarettes

1 underneath the sealed transparent outside wrapper of such  
2 original package, in such place thereon and in such manner as  
3 the Department may designate. Such imprinted language shall  
4 acknowledge the manufacturer's payment of or liability for the  
5 tax imposed by this Act with respect to the distribution of  
6 such cigarettes.

7 A distributor shall not affix, or cause to be affixed, any  
8 stamp or imprint to a package of cigarettes, as provided for in  
9 this Section, if the tobacco product manufacturer, as defined  
10 in Section 10 of the Tobacco Product Manufacturers' Escrow Act,  
11 that made or sold the cigarettes has failed to become a  
12 participating manufacturer, as defined in subdivision (a)(1)  
13 of Section 15 of the Tobacco Product Manufacturers' Escrow Act,  
14 or has failed to create a qualified escrow fund for any  
15 cigarettes manufactured by the tobacco product manufacturer  
16 and sold in this State or otherwise failed to bring itself into  
17 compliance with subdivision (a)(2) of Section 15 of the Tobacco  
18 Product Manufacturers' Escrow Act.

19 (Source: P.A. 95-1053, eff. 1-1-10.)

20 (35 ILCS 130/3-10)

21 Sec. 3-10. Cigarette enforcement.

22 (a) Prohibitions. It is unlawful for any person:

23 (1) to sell or distribute in this State; to acquire,  
24 hold, own, possess, or transport, for sale or distribution  
25 in this State; or to import, or cause to be imported into

1           this State for sale or distribution in this State:

2                   (A) any cigarettes the package of which:

3                           (i) bears any statement, label, stamp,  
4                           sticker, or notice indicating that the  
5                           manufacturer did not intend the cigarettes to be  
6                           sold, distributed, or used in the United States,  
7                           including but not limited to labels stating "For  
8                           Export Only", "U.S. Tax Exempt", "For Use Outside  
9                           U.S.", or similar wording; or

10                           (ii) does not comply with:

11                                   (aa) all requirements imposed by or  
12                                   pursuant to federal law regarding warnings and  
13                                   other information on packages of cigarettes  
14                                   manufactured, packaged, or imported for sale,  
15                                   distribution, or use in the United States,  
16                                   including but not limited to the precise  
17                                   warning labels specified in the federal  
18                                   Cigarette Labeling and Advertising Act, 15  
19                                   U.S.C. 1333; and

20                                   (bb) all federal trademark and copyright  
21                                   laws;

22                   (B) any cigarettes imported into the United States  
23                   in violation of 26 U.S.C. 5754 or any other federal  
24                   law, or implementing federal regulations;

25                   (C) any cigarettes that such person otherwise  
26                   knows or has reason to know the manufacturer did not

1 intend to be sold, distributed, or used in the United  
2 States; or

3 (D) any cigarettes for which there has not been  
4 submitted to the Secretary of the U.S. Department of  
5 Health and Human Services the list or lists of the  
6 ingredients added to tobacco in the manufacture of the  
7 cigarettes required by the federal Cigarette Labeling  
8 and Advertising Act, 15 U.S.C. 1335a;

9 (2) to alter the package of any cigarettes, prior to  
10 sale or distribution to the ultimate consumer, so as to  
11 remove, conceal, or obscure:

12 (A) any statement, label, stamp, sticker, or  
13 notice described in subdivision (a)(1)(A)(i) of this  
14 Section;

15 (B) any health warning that is not specified in, or  
16 does not conform with the requirements of, the federal  
17 Cigarette Labeling and Advertising Act, 15 U.S.C.  
18 1333; or

19 (3) to affix any stamp required pursuant to this Act to  
20 the package of any cigarettes described in subdivision  
21 (a)(1) of this Section or altered in violation of  
22 subdivision (a)(2) ~~or~~

23 ~~(4) to knowingly possess, or possess for sale,~~  
24 ~~contraband cigarettes.~~

25 (b) Documentation. On the first business day of each month,  
26 each person licensed to affix the State tax stamp to cigarettes

1 shall file with the Department, for all cigarettes imported  
2 into the United States to which the person has affixed the tax  
3 stamp in the preceding month:

4 (1) a copy of:

5 (A) the permit issued pursuant to the Internal  
6 Revenue Code, 26 U.S.C. 5713, to the person importing  
7 the cigarettes into the United States allowing the  
8 person to import the cigarettes; and

9 (B) the customs form containing, with respect to  
10 the cigarettes, the internal revenue tax information  
11 required by the U.S. Bureau of Alcohol, Tobacco and  
12 Firearms;

13 (2) a statement, signed by the person under penalty of  
14 perjury, which shall be treated as confidential by the  
15 Department and exempt from disclosure under the Freedom of  
16 Information Act, identifying the brand and brand styles of  
17 all such cigarettes, the quantity of each brand style of  
18 such cigarettes, the supplier of such cigarettes, and the  
19 person or persons, if any, to whom such cigarettes have  
20 been conveyed for resale; and a separate statement, signed  
21 by the individual under penalty of perjury, which shall not  
22 be treated as confidential or exempt from disclosure,  
23 separately identifying the brands and brand styles of such  
24 cigarettes; and

25 (3) a statement, signed by an officer of the  
26 manufacturer or importer under penalty of perjury,

1 certifying that the manufacturer or importer has complied  
2 with:

3 (A) the package health warning and ingredient  
4 reporting requirements of the federal Cigarette  
5 Labeling and Advertising Act, 15 U.S.C. 1333 and 1335a,  
6 with respect to such cigarettes; and

7 (B) the provisions of Exhibit T of the Master  
8 Settlement Agreement entered in the case of People of  
9 the State of Illinois v. Philip Morris, et al. (Circuit  
10 Court of Cook County, No. 96-L13146), including a  
11 statement indicating whether the manufacturer is, or  
12 is not, a participating tobacco manufacturer within  
13 the meaning of Exhibit T.

14 (c) Administrative sanctions.

15 (1) Upon finding that a distributor or person has  
16 committed any of the acts prohibited by subsection (a),  
17 knowing or having reason to know that he or she has done  
18 so, or has failed to comply with any requirement of  
19 subsection (b), the Department may revoke or suspend the  
20 license or licenses of any distributor pursuant to the  
21 procedures set forth in Section 6 and impose on the  
22 distributor, or on the person, a civil penalty in an amount  
23 not to exceed the greater of 500% of the retail value of  
24 the cigarettes involved or \$5,000.

25 (2) Cigarettes that are acquired, held, owned,  
26 possessed, transported in, imported into, or sold or

1 distributed in this State in violation of this Section  
2 shall be deemed contraband under this Act and are subject  
3 to seizure and forfeiture as provided in this Act, and all  
4 such cigarettes seized and forfeited shall be destroyed or  
5 maintained and used in an undercover capacity. Such  
6 cigarettes shall be deemed contraband whether the  
7 violation of this Section is knowing or otherwise.

8 (d) Unfair trade practices. In addition to any other  
9 penalties provided for in this Act, a ~~A~~ violation of subsection  
10 (a) or subsection (b) of this Section shall constitute an  
11 unlawful practice as provided in the Consumer Fraud and  
12 Deceptive Business Practices Act.

13 (d-1) Retailers shall not be liable under subsections  
14 (c)(1) and (d) of this Section for unknowingly possessing,  
15 selling, or distributing to consumers or users cigarettes  
16 identified in subsection (a)(1) of this Section if the  
17 cigarettes possessed, sold, or distributed by the retailer were  
18 obtained from a distributor licensed under this Act.

19 (e) Unfair cigarette sales. For purposes of the Trademark  
20 Registration and Protection Act and the Counterfeit Trademark  
21 Act, cigarettes imported or reimported into the United States  
22 for sale or distribution under any trade name, trade dress, or  
23 trademark that is the same as, or is confusingly similar to,  
24 any trade name, trade dress, or trademark used for cigarettes  
25 manufactured in the United States for sale or distribution in  
26 the United States shall be presumed to have been purchased

1 outside of the ordinary channels of trade.

2 (f) General provisions.

3 (1) This Section shall be enforced by the Department;  
4 provided that, at the request of the Director of Revenue or  
5 the Director's duly authorized agent, the State police and  
6 all local police authorities shall enforce the provisions  
7 of this Section. The Attorney General has concurrent power  
8 with the State's Attorney of any county to enforce this  
9 Section.

10 (2) For the purpose of enforcing this Section, the  
11 Director of Revenue and any agency to which the Director  
12 has delegated enforcement responsibility pursuant to  
13 subdivision (f)(1) may request information from any State  
14 or local agency and may share information with and request  
15 information from any federal agency and any agency of any  
16 other state or any local agency of any other state.

17 (3) In addition to any other remedy provided by law,  
18 including enforcement as provided in subdivision (a)(1),  
19 any person may bring an action for appropriate injunctive  
20 or other equitable relief for a violation of this Section;  
21 actual damages, if any, sustained by reason of the  
22 violation; and, as determined by the court, interest on the  
23 damages from the date of the complaint, taxable costs, and  
24 reasonable attorney's fees. If the trier of fact finds that  
25 the violation is flagrant, it may increase recovery to an  
26 amount not in excess of 3 times the actual damages

1           sustained by reason of the violation.

2           (g) Definitions. As used in this Section:

3           "Importer" means that term as defined in 26 U.S.C. 5702(1).

4           "Package" means that term as defined in 15 U.S.C. 1332(4).

5           (h) Applicability.

6           (1) This Section does not apply to:

7                   (A) cigarettes allowed to be imported or brought  
8                   into the United States for personal use; and

9                   (B) cigarettes sold or intended to be sold as  
10                   duty-free merchandise by a duty-free sales enterprise  
11                   in accordance with the provisions of 19 U.S.C. 1555(b)  
12                   and any implementing regulations; except that this  
13                   Section shall apply to any such cigarettes that are  
14                   brought back into the customs territory for resale  
15                   within the customs territory.

16           (2) The penalties provided in this Section are in  
17           addition to any other penalties imposed under other  
18           provision of law.

19           (Source: P.A. 95-1053, eff. 1-1-10.)

20           (35 ILCS 130/4) (from Ch. 120, par. 453.4)

21           Sec. 4. Distributor's license. No person may engage in  
22           business as a distributor of cigarettes in this State within  
23           the meaning of the first 2 definitions of distributor in  
24           Section 1 of this Act without first having obtained a license  
25           therefor from the Department. Application for license shall be

1 made to the Department in form as furnished and prescribed by  
2 the Department. Each applicant for a license under this Section  
3 shall furnish to the Department on the form signed and verified  
4 by the applicant under penalty of perjury the following  
5 information:

6 (a) The name and address of the applicant;

7 (b) The address of the location at which the applicant  
8 proposes to engage in business as a distributor of  
9 cigarettes in this State;

10 (c) Such other additional information as the  
11 Department may lawfully require by its rules and  
12 regulations.

13 The annual license fee payable to the Department for each  
14 distributor's license shall be \$250. The purpose of such annual  
15 license fee is to defray the cost, to the Department, of  
16 serializing cigarette tax stamps. Each applicant for license  
17 shall pay such fee to the Department at the time of submitting  
18 his application for license to the Department.

19 Every applicant who is required to procure a distributor's  
20 license shall file with his application a joint and several  
21 bond. Such bond shall be executed to the Department of Revenue,  
22 with good and sufficient surety or sureties residing or  
23 licensed to do business within the State of Illinois, in the  
24 amount of \$2,500, conditioned upon the true and faithful  
25 compliance by the licensee with all of the provisions of this  
26 Act. Such bond, or a reissue thereof, or a substitute therefor,

1 shall be kept in effect during the entire period covered by the  
2 license. A separate application for license shall be made, a  
3 separate annual license fee paid, and a separate bond filed,  
4 for each place of business at which a person who is required to  
5 procure a distributor's license under this Section proposes to  
6 engage in business as a distributor in Illinois under this Act.

7 The following are ineligible to receive a distributor's  
8 license under this Act:

9 (1) a person who is not of good character and  
10 reputation in the community in which he resides;

11 (2) a person who has been convicted of a felony  
12 under any Federal or State law, if the Department,  
13 after investigation and a hearing, if requested by the  
14 applicant, determines that such person has not been  
15 sufficiently rehabilitated to warrant the public  
16 trust;

17 (3) a corporation, if any officer, manager or  
18 director thereof, or any stockholder or stockholders  
19 owning in the aggregate more than 5% of the stock of  
20 such corporation, would not be eligible to receive a  
21 license under this Act for any reason;~~:-~~

22 (4) a person, or any person who owns more than 15  
23 percent of the ownership interests in a person or a  
24 related party who:

25 (a) owes, at the time of application, any ~~\$500~~  
26 ~~or more in~~ delinquent cigarette taxes that have

1           been determined by law to be due and unpaid, unless  
2           the license applicant has entered into an  
3           agreement approved by the Department to pay the  
4           amount due;

5           (b) had a license under this Act revoked within  
6           the past two years by the Department for ~~willful~~  
7           misconduct relating to stolen or contraband  
8           cigarettes or has been convicted of a State or  
9           federal crime, punishable by imprisonment of one  
10          year or more, relating to stolen or contraband  
11          cigarettes;

12          (c) ~~is a distributor who~~ manufactures  
13          cigarettes, whether in this State or out of this  
14          State, and who is neither (i) a participating  
15          manufacturer as defined in subsection II(jj) of  
16          the "Master Settlement Agreement" as defined in  
17          Sections 10 of the Tobacco Products Manufacturers'  
18          Escrow Act and the Tobacco Products Manufacturers'  
19          Escrow Enforcement Act of 2003 (30 ILCS 168/10 and  
20          30 ILCS 167/10); nor (ii) in full compliance with  
21          Tobacco Products Manufacturers' Escrow Act and the  
22          Tobacco Products Manufacturers' Escrow Enforcement  
23          Act of 2003 (30 ILCS 168/ and 30 ILCS 167/);

24          (d) has been found by the Department, after  
25          notice and a hearing, to have ~~willfully~~ imported or  
26          caused to be imported into the United States for

1 sale or distribution any cigarette in violation of  
2 19 U.S.C. 1681a;

3 (e) has been found by the Department, after  
4 notice and a hearing, to have ~~willfully~~ imported or  
5 caused to be imported into the United States for  
6 sale or distribution or manufactured for sale or  
7 distribution in the United States any cigarette  
8 that does not fully comply with the Federal  
9 Cigarette Labeling and Advertising Act (15 U.S.C.  
10 1331, et seq.); or

11 (f) has been found by the Department, after  
12 notice and a hearing, to have ~~willfully~~ made a  
13 material false statement in the application or has  
14 ~~willfully~~ failed to produce records required to be  
15 maintained by this Act.

16 The Department, upon receipt of an application, license fee  
17 and bond in proper form, from a person who is eligible to  
18 receive a distributor's license under this Act, shall issue to  
19 such applicant a license in form as prescribed by the  
20 Department, which license shall permit the applicant to which  
21 it is issued to engage in business as a distributor at the  
22 place shown in his application. All licenses issued by the  
23 Department under this Act shall be valid for not to exceed one  
24 year after issuance unless sooner revoked, canceled or  
25 suspended as provided in this Act. No license issued under this  
26 Act is transferable or assignable. Such license shall be

1 conspicuously displayed in the place of business conducted by  
2 the licensee in Illinois under such license. No distributor  
3 licensee acquires any vested interest or compensable property  
4 right in a license issued under this Act.

5 A licensed distributor shall notify the Department of any  
6 change in the information contained on the application form,  
7 including any change in ownership and shall do so within 30  
8 days after any such change.

9 Any person aggrieved by any decision of the Department  
10 under this Section may, within 20 days after notice of the  
11 decision, protest and request a hearing. Upon receiving a  
12 request for a hearing, the Department shall give notice to the  
13 person requesting the hearing of the time and place fixed for  
14 the hearing and shall hold a hearing in conformity with the  
15 provisions of this Act and then issue its final administrative  
16 decision in the matter to that person. In the absence of a  
17 protest and request for a hearing within 20 days, the  
18 Department's decision shall become final without any further  
19 determination being made or notice given.

20 (Source: P.A. 95-1053, eff. 1-1-10; revised 4-17-09.)

21 (35 ILCS 130/4b) (from Ch. 120, par. 453.4b)

22 Sec. 4b.

23 (a) The Department may, in its discretion, upon  
24 application, issue permits authorizing the payment of the tax  
25 herein imposed by out-of-State cigarette manufacturers who are

1 not required to be licensed as distributors of cigarettes in  
2 this State, but who elect to qualify under this Act as  
3 distributors of cigarettes in this State, and who, to the  
4 satisfaction of the Department, furnish adequate security to  
5 insure payment of the tax, provided that any such permit shall  
6 extend only to cigarettes which such permittee manufacturer  
7 places in original packages that are contained inside a sealed  
8 transparent wrapper. Such permits shall be issued without  
9 charge in such form as the Department may prescribe and shall  
10 not be transferable or assignable.

11 The following are ineligible to receive a distributor's  
12 permit under this subsection ~~Act~~:

13 (1) a person who is not of good character and reputation in  
14 the community in which he resides;

15 (2) a person who has been convicted of a felony under any  
16 Federal or State law, if the Department, after investigation  
17 and a hearing, if requested by the applicant, determines that  
18 such person has not been sufficiently rehabilitated to warrant  
19 the public trust;

20 (3) a corporation, if any officer, manager or director  
21 thereof, or any stockholder or stockholders owning in the  
22 aggregate more than 5% of the stock of such corporation, would  
23 not be eligible to receive a permit under this Act for any  
24 reason.

25 With respect to cigarettes which come within the scope of  
26 such a permit and which any such permittee delivers or causes

1 to be delivered in Illinois to licensed distributors  
2 ~~purchasers~~, such permittee shall remit the tax imposed by this  
3 Act at the times provided for in Section 3 of this Act. Each  
4 such remittance shall be accompanied by a return filed with the  
5 Department on a form to be prescribed and furnished by the  
6 Department and shall disclose such information as the  
7 Department may lawfully require. The Department may promulgate  
8 rules to require that the permittee's return be accompanied by  
9 appropriate computer-generated magnetic media supporting  
10 schedule data in the format prescribed by the Department,  
11 unless, as provided by rule, the Department grants an exception  
12 upon petition of the permittee. Each such return shall be  
13 accompanied by a copy of each invoice rendered by the permittee  
14 to any licensed distributor ~~purchaser~~ to whom the permittee  
15 delivered cigarettes of the type covered by the permit (or  
16 caused cigarettes of the type covered by the permit to be  
17 delivered) in Illinois during the period covered by such  
18 return.

19 Such permit may be suspended, canceled or revoked when, at  
20 any time, the Department considers that the security given is  
21 inadequate, or that such tax can more effectively be collected  
22 from distributors located in this State, or whenever the  
23 permittee violates any provision of this Act or any lawful rule  
24 or regulation issued by the Department pursuant to this Act or  
25 is determined to be ineligible for a distributor's permit under  
26 this Act as provided in this Section, whenever the permittee

1 shall notify the Department in writing of his desire to have  
2 the permit canceled. The Department shall have the power, in  
3 its discretion, to issue a new permit after such suspension,  
4 cancellation or revocation, except when the person who would  
5 receive the permit is ineligible to receive a distributor's  
6 permit under this Act.

7 All permits issued by the Department under this Act shall  
8 be valid for not to exceed one year after issuance unless  
9 sooner revoked, canceled or suspended as in this Act provided.

10 (b) Out-of-state cigarette manufacturers who are not  
11 required to be licensed as distributors of cigarettes in this  
12 State and who do not elect to obtain approval under subsection  
13 4b(a) to pay the tax imposed by this Act, but who elect to  
14 qualify under this Act as distributors of cigarettes in this  
15 State for purposes of shipping and delivering unstamped  
16 original packages of cigarettes into this State to licensed  
17 distributors, shall obtain a permit from the Department. These  
18 permits shall be issued without charge in such form as the  
19 Department may prescribe and shall not be transferable or  
20 assignable.

21 The following are ineligible to receive a distributor's  
22 permit under this subsection:

23 (1) a person who is not of good character and  
24 reputation in the community in which he or she resides;

25 (2) a person who has been convicted of a felony under  
26 any federal or State law, if the Department, after

1 investigation and a hearing, if requested by the applicant,  
2 determines that the person has not been sufficiently  
3 rehabilitated to warrant the public trust; and

4 (3) a corporation, if any officer, manager, or director  
5 thereof, or any stockholder or stockholders owning in the  
6 aggregate more than 5% of the stock of the corporation,  
7 would not be eligible to receive a permit under this Act  
8 for any reason.

9 With respect to original packages of cigarettes that such  
10 permittee delivers or causes to be delivered in Illinois and  
11 distributes to the public for promotional purposes without  
12 consideration, the permittee shall pay the tax imposed by this  
13 Act by remitting the amount thereof to the Department by the  
14 5th day of each month covering cigarettes shipped or otherwise  
15 delivered in Illinois for those purposes during the preceding  
16 calendar month. The permittee, before delivering those  
17 cigarettes or causing those cigarettes to be delivered in this  
18 State, shall evidence his or her obligation to remit the taxes  
19 due with respect to those cigarettes by imprinting language to  
20 be prescribed by the Department on each original package of  
21 cigarettes, in such place thereon and in such manner also to be  
22 prescribed by the Department. The imprinted language shall  
23 acknowledge the permittee's payment of or liability for the tax  
24 imposed by this Act with respect to the distribution of those  
25 cigarettes.

26 With respect to cigarettes that the permittee delivers or

1 causes to be delivered in Illinois to Illinois licensed  
2 distributors or distributed to the public for promotional  
3 purposes, the permittee shall, by the 5th day of each month,  
4 file with the Department, a report covering cigarettes shipped  
5 or otherwise delivered in Illinois to licensed distributors or  
6 distributed to the public for promotional purposes during the  
7 preceding calendar month on a form to be prescribed and  
8 furnished by the Department and shall disclose such other  
9 information as the Department may lawfully require. The  
10 Department may promulgate rules to require that the permittee's  
11 report be accompanied by appropriate computer-generated  
12 magnetic media supporting schedule data in the format  
13 prescribed by the Department, unless, as provided by rule, the  
14 Department grants an exception upon petition of the permittee.  
15 Each such report shall be accompanied by a copy of each invoice  
16 rendered by the permittee to any purchaser to whom the  
17 permittee delivered cigarettes of the type covered by the  
18 permit (or caused cigarettes of the type covered by the permit  
19 to be delivered) in Illinois during the period covered by such  
20 report.

21 Such permit may be suspended, canceled, or revoked whenever  
22 the permittee violates any provision of this Act or any lawful  
23 rule or regulation issued by the Department pursuant to this  
24 Act, is determined to be ineligible for a distributor's permit  
25 under this Act as provided in this Section, or notifies the  
26 Department in writing of his or her desire to have the permit

1 canceled. The Department shall have the power, in its  
2 discretion, to issue a new permit after such suspension,  
3 cancellation, or revocation, except when the person who would  
4 receive the permit is ineligible to receive a distributor's  
5 permit under this Act.

6 All permits issued by the Department under this Act shall  
7 be valid for a period not to exceed one year after issuance  
8 unless sooner revoked, canceled, or suspended as provided in  
9 this Act.

10 (Source: P.A. 79-387.)

11 (35 ILCS 130/4d)

12 Sec. 4d. Sales of cigarettes to and by retailers.  
13 ~~Transactions only with licensed distributors, out of state~~  
14 ~~manufacturers holding a permit, and retailers holding a~~  
15 ~~certificate of registration. In-state makers, manufacturers,~~  
16 and fabricators licensed as distributors under Section 4 of  
17 this Act and out-of-state makers, manufacturers, and  
18 fabricators holding permits under Section 4b of this Act may  
19 not sell original packages of cigarettes to retailers. A  
20 retailer may sell only original packages of cigarettes obtained  
21 from licensed distributors other than in-state makers,  
22 manufacturers, or fabricators licensed as distributors under  
23 Section 4 of this Act and out-of-state makers, manufacturers,  
24 or fabricators holding permits under Section 4b of this Act. A  
25 ~~distributor or manufacturer may sell or distribute cigarettes~~

1 ~~to a person located or doing business within this State only if~~  
2 ~~such person is a licensed distributor or a retailer holding a~~  
3 ~~certificate of registration. A retailer may only sell~~  
4 ~~cigarettes obtained from a licensed distributor or an~~  
5 ~~out of state manufacturer holding a permit.~~

6 (Source: P.A. 95-1053, eff. 1-1-10.)

7 (35 ILCS 130/9c) (from Ch. 120, par. 453.9c)

8 (Section scheduled to be repealed on January 1, 2010)

9 Sec. 9c. "Transporter" means any person transporting into  
10 or within this State original packages of cigarettes that are  
11 not tax stamped as required by this Act, except:

12 (a) a person transporting into this State unstamped  
13 original packages containing a total of not more than 2,000  
14 cigarettes in any single lot or shipment;

15 (b) a licensed cigarette distributor under this Act;

16 (c) a common carrier;

17 (d) a person transporting cigarettes under federal  
18 internal bond or custom control that are non-tax paid under  
19 Chapter 52 of the Internal Revenue Code of 1954, as amended;

20 (e) a person engaged in transporting cigarettes to a  
21 licensed distributor under the Illinois Cigarette Tax Act or  
22 the Illinois Cigarette Use Tax Act, or under the laws of any  
23 other state, and who has in his or her possession during the  
24 course of transporting those cigarettes a bill of lading,  
25 waybill, or other similar commercial document that was issued

1 by or for a manufacturer of cigarettes who holds a valid permit  
2 as a cigarette manufacturer under Chapter 52 of the Internal  
3 Revenue Code of 1954, as amended, and that shows that the  
4 cigarettes are being transported by or at the direction of that  
5 manufacturer to that licensed distributor.

6 Any transporter desiring to possess or acquire for  
7 transportation or transport upon the highways, roads, or  
8 streets of this State more than 2,000 cigarettes that are not  
9 contained in original packages that are Illinois tax stamped  
10 shall obtain a permit from the Department authorizing that  
11 transporter to possess or acquire for transportation or  
12 transport the cigarettes, and he or she shall have the permit  
13 in the transporting vehicle during the period of transportation  
14 of the cigarettes. The application for the permit shall be in  
15 such form and shall contain such information as may be  
16 prescribed by the Department. The Department may issue a permit  
17 for a single load or shipment or for a number of loads or  
18 shipments to be transported under specified conditions.

19 Any cigarettes transported on the highways, roads, or  
20 streets of this State under conditions that violate any  
21 requirement of this Section, and the vehicle containing those  
22 cigarettes, are subject to seizure by the Department, and to  
23 confiscation and forfeiture in the same manner as is provided  
24 for in Section 18a of this Act.

25 Any person who violates any requirement of this Section is  
26 guilty of a Class 4 felony.

1        Any transporter who, with intent to defeat or evade or with  
2 intent to aid another to defeat or evade the tax imposed by  
3 this Act, at any given time, transports 40,000 or more  
4 cigarettes upon the highways, roads, or streets of this State  
5 under conditions that violate any requirement of this Section  
6 is guilty of a Class 3 felony.

7 ~~"Transporter" means any person transporting into or within this~~  
8 ~~State original packages of cigarettes which are not tax stamped~~  
9 ~~as required by this Act, except:~~

10        ~~(a) A person transporting into this State unstamped~~  
11 ~~original packages containing a total of not more than 2000~~  
12 ~~cigarettes in any single lot or shipment;~~

13        ~~(b) a licensed cigarette distributor under this Act;~~

14        ~~(c) a common carrier;~~

15        ~~(d) a person transporting cigarettes under Federal~~  
16 ~~internal bond or custom control that are non tax paid under~~  
17 ~~Chapter 52 of the Internal Revenue Code of 1954, as amended;~~

18        ~~(e) a person engaged in transporting cigarettes to a~~  
19 ~~cigarette dealer who is properly licensed as a distributor~~  
20 ~~under the Illinois Cigarette Tax Act or the Illinois Cigarette~~  
21 ~~Use Tax Act, or under the laws of any other state, and who has~~  
22 ~~in his possession during the course of transporting such~~  
23 ~~cigarettes a bill of lading, waybill, or other similar~~  
24 ~~commercial document which was issued by or for a manufacturer~~  
25 ~~of cigarettes who holds a valid permit as a cigarette~~  
26 ~~manufacturer under Chapter 52, Internal Revenue Code of 1954,~~

1 ~~as subsequently amended, and which shows that the cigarettes~~  
2 ~~are being transported by or at the direction of such~~  
3 ~~manufacturer to such licensed cigarette dealer.~~

4 ~~Any transporter desiring to possess or acquire for~~  
5 ~~transportation or transport upon the highways, roads or streets~~  
6 ~~of this State more than 2000 cigarettes which are not contained~~  
7 ~~in original packages that are Illinois tax stamped shall obtain~~  
8 ~~a permit from the Department authorizing such transporter to~~  
9 ~~possess or acquire for transportation or transport the~~  
10 ~~cigarettes, and he shall have the permit in the transporting~~  
11 ~~vehicle during the period of transportation of the cigarettes.~~  
12 ~~The application for the permit shall be in such form and shall~~  
13 ~~contain such information as may be prescribed by the~~  
14 ~~Department. The Department may issue a permit for a single load~~  
15 ~~or shipment or for a number of loads or shipments to be~~  
16 ~~transported under specified conditions.~~

17 ~~Any cigarettes transported on the highways, roads or~~  
18 ~~streets of this State under conditions which violate any~~  
19 ~~requirement of this Section, and the vehicle containing such~~  
20 ~~cigarettes, are subject to seizure by the Department, and to~~  
21 ~~confiscation and forfeiture in the same manner as is provided~~  
22 ~~for in Section 18a of this Act. Any such confiscated and~~  
23 ~~forfeited property shall be sold in the same manner and under~~  
24 ~~the same conditions as provided for in Section 21 of this Act,~~  
25 ~~with the proceeds from any such sale being deposited in the~~  
26 ~~State Treasury.~~

1       ~~Any person who violates any requirement of this Section is~~  
2 ~~guilty of a Class 4 felony.~~

3       ~~Any transporter who, with intent to defeat or evade or with~~  
4 ~~intent to aid another to defeat or evade the tax imposed by~~  
5 ~~this Act, at any given time, transports 40,000 or more~~  
6 ~~cigarettes upon the highways, roads or streets of this State~~  
7 ~~under conditions which violate any requirement of this Section~~  
8 ~~shall be guilty of a Class 3 felony.~~

9       (Source: P.A. 83-1428. Repealed by P.A. 95-1053, eff. 1-1-10.)

10       (35 ILCS 130/18) (from Ch. 120, par. 453.18)

11       Sec. 18. Any duly authorized employee of the Department may  
12 arrest without warrant any person committing in his presence a  
13 violation of any of the provisions of this Act, and may without  
14 a search warrant inspect all cigarettes located in any place of  
15 business and seize any original packages of contraband  
16 cigarettes ~~not tax stamped or tax imprinted underneath the~~  
17 ~~sealed transparent wrapper of such original packages in~~  
18 ~~accordance with the provisions of this Act~~ and any vending  
19 device in which such packages may be found, and such original  
20 packages or vending devices so seized shall be subject to  
21 confiscation and forfeiture as hereinafter provided.

22       (Source: P.A. 82-1009.)

23       (35 ILCS 130/18a) (from Ch. 120, par. 453.18a)

24       Sec. 18a. After seizing any original packages of

1 cigarettes, or cigarette vending devices, as provided in  
2 Section 18 of this Act, the Department shall hold a hearing and  
3 shall determine whether such original packages of cigarettes,  
4 at the time of their seizure by the Department, were contraband  
5 cigarettes ~~not tax stamped or tax imprinted underneath the~~  
6 ~~sealed transparent wrapper of such original packages in~~  
7 ~~accordance with this Act,~~ or whether such cigarette vending  
8 devices, at the time of their seizure by the Department,  
9 contained original packages of contraband cigarettes ~~not tax~~  
10 ~~stamped or tax imprinted underneath the sealed transparent~~  
11 ~~wrapper of such original packages as required by this Act.~~ The  
12 Department shall give not less than 7 days' notice of the time  
13 and place of such hearing to the owner of such property if he  
14 is known, and also to the person in whose possession the  
15 property so taken was found, if such person is known and if  
16 such person in possession is not the owner of said property. In  
17 case neither the owner nor the person in possession of such  
18 property is known, the Department shall cause publication of  
19 the time and place of such hearing to be made at least once in  
20 each week for 3 weeks successively in a newspaper of general  
21 circulation in the county where such hearing is to be held.

22 If, as the result of such hearing, the Department shall  
23 determine that the original packages of cigarettes seized were  
24 at the time of seizure contraband cigarettes ~~not tax stamped or~~  
25 ~~tax imprinted underneath the sealed transparent wrapper of such~~  
26 ~~original packages as required by this Act,~~ or that any

1 cigarette vending device at the time of its seizure contained  
2 original packages of contraband cigarettes ~~not tax stamped or~~  
3 ~~tax imprinted underneath the sealed transparent wrapper of such~~  
4 ~~original packages as required by this Act,~~ the Department shall  
5 enter an order declaring such original packages of cigarettes  
6 or such cigarette vending devices confiscated and forfeited to  
7 the State, and to be held by the Department for disposal by it  
8 as provided in Section 21 of this Act. The Department shall  
9 give notice of such order to the owner of such property if he  
10 is known, and also to the person in whose possession the  
11 property so taken was found, if such person is known and if  
12 such person in possession is not the owner of said property. In  
13 case neither the owner nor the person in possession of such  
14 property is known, the Department shall cause publication of  
15 such order to be made at least once in each week for 3 weeks  
16 successively in a newspaper of general circulation in the  
17 county where such hearing was held.

18 (Source: P.A. 76-684.)

19 (35 ILCS 130/18b) (from Ch. 120, par. 453.18b)

20 Sec. 18b. Possession of more than 100 original packages of  
21 contraband cigarettes; penalty. With the exception of licensed  
22 distributors and transporters, as defined in Section 9c of this  
23 Act, possessing unstamped original packages of cigarettes, and  
24 licensed distributors possessing original packages of  
25 cigarettes that bear a tax stamp of another state or taxing

1 jurisdiction, anyone possessing contraband cigarettes  
2 contained in original packages ~~is which are not tax stamped as~~  
3 ~~required by this Act, or which are improperly tax stamped,~~  
4 ~~shall be~~ liable to pay, to the Department for deposit in the  
5 Tax Compliance and Administration Fund State Treasury, a  
6 penalty of \$25 ~~\$15~~ for each such package of cigarettes in  
7 excess of 100 packages, unless reasonable cause can be  
8 established by the person upon whom the penalty is imposed.  
9 This penalty is in addition to the taxes imposed by this Act.  
10 Reasonable cause shall be determined in each situation in  
11 accordance with rules adopted by the Department. The provisions  
12 of the Uniform Penalty and Interest Act do not apply to this  
13 Section. ~~Such penalty may be recovered by the Department in a~~  
14 ~~civil action.~~

15 (Source: P.A. 83-1428.)

16 (35 ILCS 130/18c)

17 Sec. 18c. Possession of not less than 10 and not more than  
18 100 original packages of contraband cigarettes ~~not tax stamped~~  
19 ~~or improperly tax stamped~~; penalty. With the exception of  
20 licensed distributors and transporters, as defined in Section  
21 9c of this Act, possessing unstamped original packages of  
22 cigarettes, and licensed distributors possessing original  
23 packages of cigarettes that bear a tax stamp of another state  
24 or taxing jurisdiction, anyone possessing not less than 10 and  
25 not more than 100 packages of contraband cigarettes contained

1 in original packages ~~that are not tax stamped as required by~~  
2 ~~this Act, or that are improperly tax stamped,~~ is liable to pay  
3 to the Department, for deposit into the Tax Compliance and  
4 Administration Fund, a penalty of \$10 for each such package of  
5 cigarettes, unless reasonable cause can be established by the  
6 person upon whom the penalty is imposed. Reasonable cause shall  
7 be determined in each situation in accordance with rules  
8 adopted by the Department. The provisions of the Uniform  
9 Penalty and Interest Act do not apply to this Section.

10 (Source: P.A. 92-322, eff. 1-1-02.)

11 (35 ILCS 130/20) (from Ch. 120, par. 453.20)

12 Sec. 20. Whenever any peace officer of the State or any  
13 duly authorized officer or employee of the Department shall  
14 have reason to believe that any violation of this Act has  
15 occurred and that the person so violating the Act has in his,  
16 her or its possession any original package of contraband  
17 cigarettes, ~~not tax stamped or tax imprinted underneath the~~  
18 ~~sealed transparent wrapper of such original package as required~~  
19 ~~by this Act,~~ or any vending device containing such original  
20 packages of contraband cigarettes ~~to which stamps have not been~~  
21 ~~affixed, or on which an authorized substitute for stamps has~~  
22 ~~not been imprinted underneath the sealed transparent wrapper of~~  
23 ~~such original packages, as required by this Act,~~ he may file or  
24 cause to be filed his complaint in writing, verified by  
25 affidavit, with any court within whose jurisdiction the

1 premises to be searched are situated, stating the facts upon  
2 which such belief is founded, the premises to be searched, and  
3 the property to be seized, and procure a search warrant and  
4 execute the same. Upon the execution of such search warrant,  
5 the peace officer, or officer or employee of the Department,  
6 executing such search warrant shall make due return thereof to  
7 the court issuing the same, together with an inventory of the  
8 property taken thereunder. The court shall thereupon issue  
9 process against the owner of such property if he is known;  
10 otherwise, such process shall be issued against the person in  
11 whose possession the property so taken is found, if such person  
12 is known. In case of inability to serve such process upon the  
13 owner or the person in possession of the property at the time  
14 of its seizure, as hereinbefore provided, notice of the  
15 proceedings before the court shall be given as required by the  
16 statutes of the State governing cases of Attachment. Upon the  
17 return of the process duly served or upon the posting or  
18 publishing of notice made, as hereinabove provided, the court  
19 or jury, if a jury shall be demanded, shall proceed to  
20 determine whether or not such property so seized was held or  
21 possessed in violation of this Act, or whether, if a vending  
22 device has been so seized, it contained at the time of its  
23 seizure original packages of contraband cigarettes ~~not tax~~  
24 ~~stamped or tax imprinted underneath the sealed transparent~~  
25 ~~wrapper of such original packages as required by this Act.~~ In  
26 case of a finding that the original packages seized were

1 ~~contraband cigarettes not tax stamped or tax imprinted~~  
2 ~~underneath the sealed transparent wrapper of such original~~  
3 ~~packages in accordance with the provisions of this Act,~~ or that  
4 any vending device so seized contained at the time of its  
5 seizure original packages of contraband cigarettes ~~not tax~~  
6 ~~stamped or tax imprinted underneath the sealed transparent~~  
7 ~~wrapper of such original packages in accordance with the~~  
8 ~~provisions of this Act,~~ judgment shall be entered confiscating  
9 and forfeiting the property to the State and ordering its  
10 delivery to the Department, and in addition thereto, the court  
11 shall have power to tax and assess the costs of the  
12 proceedings.

13 When any original packages or any cigarette vending device  
14 shall have been declared forfeited to the State by any court,  
15 as hereinbefore provided, and when such confiscated and  
16 forfeited property shall have been delivered to the Department,  
17 as provided in this Act, the said Department shall destroy or  
18 maintain and use such property in an undercover capacity. The  
19 Department may, prior to any destruction of cigarettes, permit  
20 the true holder of the trademark rights in the cigarette brand  
21 to inspect such contraband cigarettes, in order to assist the  
22 Department in any investigation regarding such cigarettes.

23 (Source: P.A. 95-1053, eff. 1-1-10.)

24 (35 ILCS 130/24) (from Ch. 120, par. 453.24)

25 Sec. 24. Punishment for sale or possession of ~~unstamped~~

1 packages of contraband cigarettes.

2 (a) Possession or sale of 100 or less packages of  
3 contraband cigarettes. With the exception of licensed  
4 distributors or transporters, as defined in Section 9c of this  
5 Act, any person who has in his or her possession or sells 100  
6 or less original packages of contraband cigarettes is guilty of  
7 a Class A misdemeanor.

8 (b) Possession or sale of more than 100 but less than 251  
9 packages of contraband cigarettes. With the exception of  
10 licensed distributors or transporters, as defined in Section 9c  
11 of this Act, any person who has in his or her possession or  
12 sells more than 100 but less than 251 original packages of  
13 contraband cigarettes is guilty of a Class A misdemeanor for a  
14 first offense and a Class 4 felony for each subsequent offense.

15 (c) Possession or sale of more than 250 but less than 1,001  
16 packages of contraband cigarettes. With the exception of  
17 licensed distributors or transporters, as defined in Section 9c  
18 of this Act, any person who has in his or her possession or  
19 sells more than 250 but less than 1,001 original packages of  
20 contraband cigarettes is guilty of a Class 4 felony.

21 (d) Possession or sale of more than 1,000 packages of  
22 contraband cigarettes. With the exception of licensed  
23 distributors or transporters, as defined in Section 9c of this  
24 Act, any person who has in his or her possession or sells more  
25 than 1,000 original packages of contraband cigarettes is guilty  
26 of a Class 3 felony.

1       (e) Any person licensed as a distributor or transporter, as  
2 defined in Section 9c of this Act, who has in his or her  
3 possession or sells 100 or less original packages of contraband  
4 cigarettes is guilty of a Class A misdemeanor.

5       (f) Any person licensed as a distributor or transporter, as  
6 defined in Section 9c of this Act, who has in his or her  
7 possession or sells more than 100 original packages of  
8 contraband cigarettes is guilty of a Class 4 felony.

9       (g) Notwithstanding subsections (e) through (f), licensed  
10 distributors and transporters, as defined in Section 9c of this  
11 Act, may possess unstamped packages of cigarettes.  
12 Notwithstanding subsections (e) through (f), licensed  
13 distributors may possess cigarettes that bear a tax stamp of  
14 another state or taxing jurisdiction. Notwithstanding  
15 subsections (e) through (f), a licensed distributor may possess  
16 contraband cigarettes returned to the distributor by a retailer  
17 if the distributor immediately conducts an inventory of the  
18 cigarettes being returned, the distributor and the retailer  
19 returning the contraband cigarettes sign the inventory, the  
20 distributor provides a copy of the signed inventory to the  
21 retailer, and the distributor retains the inventory in its  
22 books and records and promptly notifies the Department of  
23 Revenue.

24       (h) Notwithstanding subsections (a) through (d) of this  
25 Section, a retailer unknowingly possessing contraband  
26 cigarettes obtained from a licensed distributor or knowingly

1 possessing contraband cigarettes obtained from a licensed  
2 distributor is not subject to penalties under this Section if  
3 the retailer, within 48 hours after discovering that the  
4 cigarettes are contraband cigarettes, excluding Saturdays,  
5 Sundays, and holidays: (i) notifies the Department and the  
6 licensed distributor from whom the cigarettes were obtained,  
7 orally and in writing, that he or she possesses contraband  
8 cigarettes obtained from a licensed distributor; (ii) places  
9 the contraband cigarettes in one or more containers and seals  
10 those containers; and (iii) places on the containers the  
11 following or similar language: "Contraband Cigarettes. Not For  
12 Sale." All contraband cigarettes in the possession of a  
13 retailer remain subject to forfeiture under the provisions of  
14 this Act.

15 ~~(a) Any person other than a licensed distributor who sells,~~  
16 ~~offers for sale, or has in his possession with intent to sell~~  
17 ~~or offer for sale, more than 100 original packages, not tax~~  
18 ~~stamped or tax imprinted underneath the sealed transparent~~  
19 ~~wrapper of such original package in accordance with this Act,~~  
20 ~~shall be guilty of a Class 4 felony.~~

21 ~~(a-5) Any person other than a licensed distributor who~~  
22 ~~sells, offers for sale, or has in his possession with intent to~~  
23 ~~sell or offer for sale, 100 or fewer original packages, not tax~~  
24 ~~stamped or tax imprinted underneath the sealed transparent~~  
25 ~~wrapper of the original package in accordance with this Act, is~~  
26 ~~guilty of a Class A misdemeanor for the first offense and a~~

1 ~~Class 4 felony for each subsequent offense.~~

2 ~~(b) Any distributor who sells an original package of~~  
3 ~~cigarettes, not tax stamped or tax imprinted underneath the~~  
4 ~~sealed transparent wrapper of such original package in~~  
5 ~~accordance with this Act, except when the sale is made under~~  
6 ~~such circumstances that the tax imposed by this Act may not~~  
7 ~~legally be levied because of the Constitution or laws of the~~  
8 ~~United States, shall be guilty of a Class 3 felony.~~

9 (Source: P.A. 92-322, eff. 1-1-02.)

10 (35 ILCS 130/28a new)

11 Sec. 28a. If, at the time of terminating his or her  
12 business, any licensed distributor has on hand unused stamps,  
13 the distributor or his or her legal representative may, after  
14 Department approval, transfer or sell those unused stamps to  
15 another distributor licensed under this Act. The transferring  
16 distributor, or his or her legal representative, shall report  
17 to the Department in writing an intention to so sell or  
18 transfer the stamps and the name and address of the distributor  
19 to whom the sale or transfer is to be made, together with the  
20 total of the face amount of each denomination of stamps to be  
21 so sold or transferred. The Department shall approve or  
22 disapprove the requested transfer within 48 hours after  
23 receiving the report. Approval shall be deemed granted if not  
24 received by the distributor within 5 business days after the  
25 Department's receipt of the report.

1 (35 ILCS 130/3-15 rep.)

2 Section 10. The Cigarette Tax Act is amended by repealing  
3 Section 3-15.

4 Section 15. The Cigarette Use Tax Act is amended by  
5 changing Sections 1, 3, 3-10, 4, 7, 24, 25, 25a, 25b, and 30  
6 and by adding Section 4d as follows:

7 (35 ILCS 135/1) (from Ch. 120, par. 453.31)

8 Sec. 1. For the purpose of this Act, unless otherwise  
9 required by the context:

10 "Use" means the exercise by any person of any right or  
11 power over cigarettes incident to the ownership or possession  
12 thereof, other than the making of a sale thereof in the course  
13 of engaging in a business of selling cigarettes and shall  
14 include the keeping or retention of cigarettes for use, except  
15 that "use" does not include the use of cigarettes by a  
16 not-for-profit research institution conducting tests  
17 concerning the health effects of tobacco products, provided the  
18 cigarettes are not offered for resale.

19 "Brand Style" means a variety of cigarettes distinguished  
20 by the tobacco used, tar and nicotine content, flavoring used,  
21 size of the cigarette, filtration on the cigarette or  
22 packaging.

23 "Cigarette" means any roll for smoking made wholly or in

1 part of tobacco irrespective of size or shape and whether or  
2 not such tobacco is flavored, adulterated or mixed with any  
3 other ingredient, and the wrapper or cover of which is made of  
4 paper or any other substance or material except tobacco.

5 "Contraband cigarettes" means:

6 (a) cigarettes that do not bear a required tax stamp  
7 under this Act;

8 (b) cigarettes for which any required federal taxes  
9 have not been paid;

10 (c) cigarettes that bear a counterfeit tax stamp;

11 (d) cigarettes that are manufactured, fabricated,  
12 assembled, processed, packaged, or labeled by any person  
13 other than (i) the owner of the trademark rights in the  
14 cigarette brand or (ii) a person that is directly or  
15 indirectly authorized by such owner;

16 (e) cigarettes imported into the United States, or  
17 otherwise distributed, in violation of the federal  
18 Imported Cigarette Compliance Act of 2000 (Title IV of  
19 Public Law 106-476); ~~or~~

20 (f) cigarettes that have false manufacturing labels; ~~or~~

21 (g) cigarettes identified in Section 3-10(a)(1) of  
22 this Act; or

23 (h) cigarettes that are improperly tax stamped,  
24 including cigarettes that bear a tax stamp of another state  
25 or taxing jurisdiction.

26 "Person" means any natural individual, firm, partnership,

1 association, joint stock company, joint adventure, public or  
2 private corporation, however formed, limited liability  
3 company, or a receiver, executor, administrator, trustee,  
4 guardian or other representative appointed by order of any  
5 court.

6 "Department" means the Department of Revenue.

7 "Sale" means any transfer, exchange or barter in any manner  
8 or by any means whatsoever for a consideration, and includes  
9 and means all sales made by any person.

10 "Original Package" means the individual packet, box or  
11 other container whatsoever used to contain and to convey  
12 cigarettes to the consumer.

13 "Distributor" means any and each of the following:

14 a. Any person engaged in the business of selling  
15 cigarettes in this State who brings or causes to be brought  
16 into this State from without this State any original  
17 packages of cigarettes, on which original packages there is  
18 no authorized evidence underneath a sealed transparent  
19 wrapper showing that the tax liability imposed by this Act  
20 has been paid or assumed by the out-of-State seller of such  
21 cigarettes, for sale in the course of such business.

22 b. Any person who makes, manufactures or fabricates  
23 cigarettes in this State for sale, except a person who  
24 makes, manufactures or fabricates cigarettes for sale to  
25 residents incarcerated in penal institutions or resident  
26 patients or a State-operated mental health facility.

1           c. Any person who makes, manufactures or fabricates  
2           cigarettes outside this State, which cigarettes are placed  
3           in original packages contained in sealed transparent  
4           wrappers, for delivery or shipment into this State, and who  
5           elects to qualify and is accepted by the Department as a  
6           distributor under Section 7 of this Act.

7           "Distributor" does not include any person who transfers  
8           cigarettes to a not-for-profit research institution that  
9           conducts tests concerning the health effects of tobacco  
10          products and who does not offer the cigarettes for resale.

11          "Distributor maintaining a place of business in this  
12          State", or any like term, means any distributor having or  
13          maintaining within this State, directly or by a subsidiary, an  
14          office, distribution house, sales house, warehouse or other  
15          place of business, or any agent operating within this State  
16          under the authority of the distributor or its subsidiary,  
17          irrespective of whether such place of business or agent is  
18          located here permanently or temporarily, or whether such  
19          distributor or subsidiary is licensed to transact business  
20          within this State.

21          "Business" means any trade, occupation, activity or  
22          enterprise engaged in or conducted in this State for the  
23          purpose of selling cigarettes.

24          "Prior Continuous Compliance Taxpayer" means any person  
25          who is licensed under this Act and who, having been a licensee  
26          for a continuous period of 5 years, is determined by the

1 Department not to have been either delinquent or deficient in  
2 the payment of tax liability during that period or otherwise in  
3 violation of this Act. Also, any taxpayer who has, as verified  
4 by the Department, continuously complied with the condition of  
5 his bond or other security under provisions of this Act of a  
6 period of 5 consecutive years shall be considered to be a  
7 "prior continuous compliance taxpayer". In calculating the  
8 consecutive period of time described herein for qualification  
9 as a "prior continuous compliance taxpayer", a consecutive  
10 period of time of qualifying compliance immediately prior to  
11 the effective date of this amendatory Act of 1987 shall be  
12 credited to any licensee who became licensed on or before the  
13 effective date of this amendatory Act of 1987.

14 "Stamp" or "stamps" mean the indicia required to be affixed  
15 on a pack of cigarettes that evidence payment of the tax on  
16 cigarettes under Section 2 of this Act ~~(35 ILCS 130/2), or the~~  
17 ~~indicia used to indicate that the cigarettes are intended for a~~  
18 ~~sale or distribution within this State that is exempt from~~  
19 ~~State tax under any applicable provision of law.~~

20 ~~"Within this State" means within the exterior limits of the~~  
21 ~~State of Illinois and includes all territory within these~~  
22 ~~limits owned by or ceded to the United States of America.~~

23 "Related party" means any person that is associated with  
24 any other person because he or she:

25 (a) is an officer or director of a business; or

26 (b) is legally recognized as a partner in business. †

1           ~~or~~

2                   ~~(c) is directly or indirectly controlled by another.~~

3           (Source: P.A. 95-462, eff. 8-27-07; 95-1053, eff. 1-1-10.)

4           (35 ILCS 135/3) (from Ch. 120, par. 453.33)

5           Sec. 3. Stamp payment. The tax hereby imposed shall be  
6 collected by a distributor maintaining a place of business in  
7 this State or a distributor authorized by the Department  
8 pursuant to Section 7 hereof to collect the tax, and the amount  
9 of the tax shall be added to the price of the cigarettes sold  
10 by such distributor. Collection of the tax shall be evidenced  
11 by a stamp or stamps affixed to each original package of  
12 cigarettes or by an authorized substitute for such stamp  
13 imprinted on each original package of such cigarettes  
14 underneath the sealed transparent outside wrapper of such  
15 original package, except as hereinafter provided. Each  
16 distributor who is required or authorized to collect the tax  
17 herein imposed, before delivering or causing to be delivered  
18 any original packages of cigarettes in this State to any  
19 purchaser, shall firmly affix a proper stamp or stamps to each  
20 such package, or (in the case of manufacturers of cigarettes in  
21 original packages which are contained inside a sealed  
22 transparent wrapper) shall imprint the required language on the  
23 original package of cigarettes beneath such outside wrapper as  
24 hereinafter provided. Such stamp or stamps need not be affixed  
25 to the original package of any cigarettes with respect to which

1 the distributor is required to affix a like stamp or stamps by  
2 virtue of the Cigarette Tax Act, however, and no tax imprint  
3 need be placed underneath the sealed transparent wrapper of an  
4 original package of cigarettes with respect to which the  
5 distributor is required or authorized to employ a like tax  
6 imprint by virtue of the Cigarette Tax Act.

7 No stamp or imprint may be affixed to, or made upon, any  
8 package of cigarettes unless that package complies with all  
9 requirements of the federal Cigarette Labeling and Advertising  
10 Act, 15 U.S.C. 1331 and following, for the placement of labels,  
11 warnings, or any other information upon a package of cigarettes  
12 that is sold within the United States. Under the authority of  
13 Section 6, the Department shall revoke the license of any  
14 distributor that is determined to have violated this paragraph.  
15 A person may not affix a stamp on a package of cigarettes,  
16 cigarette papers, wrappers, or tubes if that individual package  
17 has been marked for export outside the United States with a  
18 label or notice in compliance with Section 290.185 of Title 27  
19 of the Code of Federal Regulations. It is not a defense to a  
20 proceeding for violation of this paragraph that the label or  
21 notice has been removed, mutilated, obliterated, or altered in  
22 any manner.

23 Only distributors licensed under this Act and  
24 transporters, as defined in Section 9c of the Cigarette Tax  
25 Act, may possess unstamped original packages of cigarettes.  
26 Prior to shipment to an Illinois retailer, a stamp shall be

1 applied to each original package of cigarettes sold to the  
2 retailer. A distributor may apply a tax stamp only to an  
3 original package of cigarettes purchased or obtained directly  
4 from an in-state maker, manufacturer, or fabricator licensed as  
5 a distributor under Section 4 of this Act or an out-of-state  
6 maker, manufacturer, or fabricator holding a permit under  
7 Section 7 of this Act. A licensed distributor may ship or  
8 otherwise cause to be delivered unstamped original packages of  
9 cigarettes in, into, or from this State. A licensed distributor  
10 may transport unstamped original packages of cigarettes to a  
11 facility, wherever located, owned or controlled by such  
12 distributor; however, a distributor may not transport  
13 unstamped original packages of cigarettes to a facility where  
14 retail sales of cigarettes take place. Any licensed distributor  
15 that ships or otherwise causes to be delivered unstamped  
16 original packages of cigarettes into, within, or from this  
17 State shall ensure that the invoice or equivalent documentation  
18 and the bill of lading or freight bill for the shipment  
19 identifies the true name and address of the consignor or  
20 seller, the true name and address of the consignee or  
21 purchaser, and the quantity by brand style of the cigarettes so  
22 transported, provided that this Section shall not be construed  
23 as to impose any requirement or liability upon any common or  
24 contract carrier.

25 Stamps, when required hereunder, shall be purchased from  
26 the Department, or any person authorized by the Department, by

1 distributors. On and after July 1, 2003, payment for such  
2 stamps must be made by means of electronic funds transfer. The  
3 Department may refuse to sell stamps to any person who does not  
4 comply with the provisions of this Act. Beginning on June 6,  
5 2002 and through June 30, 2002, persons holding valid licenses  
6 as distributors may purchase cigarette tax stamps up to an  
7 amount equal to 115% of the distributor's average monthly  
8 cigarette tax stamp purchases over the 12 calendar months prior  
9 to June 6, 2002.

10 Prior to December 1, 1985, the Department shall allow a  
11 distributor 21 days in which to make final payment of the  
12 amount to be paid for such stamps, by allowing the distributor  
13 to make payment for the stamps at the time of purchasing them  
14 with a draft which shall be in such form as the Department  
15 prescribes, and which shall be payable within 21 days  
16 thereafter: Provided that such distributor has filed with the  
17 Department, and has received the Department's approval of, a  
18 bond, which is in addition to the bond required under Section 4  
19 of this Act, payable to the Department in an amount equal to  
20 80% of such distributor's average monthly tax liability to the  
21 Department under this Act during the preceding calendar year or  
22 \$500,000, whichever is less. The bond shall be joint and  
23 several and shall be in the form of a surety company bond in  
24 such form as the Department prescribes, or it may be in the  
25 form of a bank certificate of deposit or bank letter of credit.  
26 The bond shall be conditioned upon the distributor's payment of

1 the amount of any 21-day draft which the Department accepts  
2 from that distributor for the delivery of stamps to that  
3 distributor under this Act. The distributor's failure to pay  
4 any such draft, when due, shall also make such distributor  
5 automatically liable to the Department for a penalty equal to  
6 25% of the amount of such draft.

7 On and after December 1, 1985 and until July 1, 2003, the  
8 Department shall allow a distributor 30 days in which to make  
9 final payment of the amount to be paid for such stamps, by  
10 allowing the distributor to make payment for the stamps at the  
11 time of purchasing them with a draft which shall be in such  
12 form as the Department prescribes, and which shall be payable  
13 within 30 days thereafter, and beginning on January 1, 2003 and  
14 thereafter, the draft shall be payable by means of electronic  
15 funds transfer: Provided that such distributor has filed with  
16 the Department, and has received the Department's approval of,  
17 a bond, which is in addition to the bond required under Section  
18 4 of this Act, payable to the Department in an amount equal to  
19 150% of such distributor's average monthly tax liability to the  
20 Department under this Act during the preceding calendar year or  
21 \$750,000, whichever is less, except that as to bonds filed on  
22 or after January 1, 1987, such additional bond shall be in an  
23 amount equal to 100% of such distributor's average monthly tax  
24 liability under this Act during the preceding calendar year or  
25 \$750,000, whichever is less. The bond shall be joint and  
26 several and shall be in the form of a surety company bond in

1 such form as the Department prescribes, or it may be in the  
2 form of a bank certificate of deposit or bank letter of credit.  
3 The bond shall be conditioned upon the distributor's payment of  
4 the amount of any 30-day draft which the Department accepts  
5 from that distributor for the delivery of stamps to that  
6 distributor under this Act. The distributor's failure to pay  
7 any such draft, when due, shall also make such distributor  
8 automatically liable to the Department for a penalty equal to  
9 25% of the amount of such draft.

10 Every prior continuous compliance taxpayer shall be exempt  
11 from all requirements under this Section concerning the  
12 furnishing of such bond, as defined in this Section, as a  
13 condition precedent to his being authorized to engage in the  
14 business licensed under this Act. This exemption shall continue  
15 for each such taxpayer until such time as he may be determined  
16 by the Department to be delinquent in the filing of any  
17 returns, or is determined by the Department (either through the  
18 Department's issuance of a final assessment which has become  
19 final under the Act, or by the taxpayer's filing of a return  
20 which admits tax to be due that is not paid) to be delinquent  
21 or deficient in the paying of any tax under this Act, at which  
22 time that taxpayer shall become subject to the bond  
23 requirements of this Section and, as a condition of being  
24 allowed to continue to engage in the business licensed under  
25 this Act, shall be required to furnish bond to the Department  
26 in such form as provided in this Section. Such taxpayer shall

1 furnish such bond for a period of 2 years, after which, if the  
2 taxpayer has not been delinquent in the filing of any returns,  
3 or delinquent or deficient in the paying of any tax under this  
4 Act, the Department may reinstate such person as a prior  
5 continuance compliance taxpayer. Any taxpayer who fails to pay  
6 an admitted or established liability under this Act may also be  
7 required to post bond or other acceptable security with the  
8 Department guaranteeing the payment of such admitted or  
9 established liability.

10 Any person aggrieved by any decision of the Department  
11 under this Section may, within the time allowed by law, protest  
12 and request a hearing, whereupon the Department shall give  
13 notice and shall hold a hearing in conformity with the  
14 provisions of this Act and then issue its final administrative  
15 decision in the matter to such person. In the absence of such a  
16 protest filed within the time allowed by law, the Department's  
17 decision shall become final without any further determination  
18 being made or notice given.

19 The Department shall discharge any surety and shall release  
20 and return any bond or security deposited, assigned, pledged,  
21 or otherwise provided to it by a taxpayer under this Section  
22 within 30 days after:

23 (1) such Taxpayer becomes a prior continuous  
24 compliance taxpayer; or

25 (2) such taxpayer has ceased to collect receipts on  
26 which he is required to remit tax to the Department, has

1 filed a final tax return, and has paid to the Department an  
2 amount sufficient to discharge his remaining tax liability  
3 as determined by the Department under this Act. The  
4 Department shall make a final determination of the  
5 taxpayer's outstanding tax liability as expeditiously as  
6 possible after his final tax return has been filed. If the  
7 Department cannot make such final determination within 45  
8 days after receiving the final tax return, within such  
9 period it shall so notify the taxpayer, stating its reasons  
10 therefor.

11 At the time of purchasing such stamps from the Department  
12 when purchase is required by this Act, or at the time when the  
13 tax which he has collected is remitted by a distributor to the  
14 Department without the purchase of stamps from the Department  
15 when that method of remitting the tax that has been collected  
16 is required or authorized by this Act, the distributor shall be  
17 allowed a discount during any year commencing July 1 and ending  
18 the following June 30 in accordance with the schedule set out  
19 hereinbelow, from the amount to be paid by him to the  
20 Department for such stamps, or to be paid by him to the  
21 Department on the basis of monthly remittances (as the case may  
22 be), to cover the cost, to such distributor, of collecting the  
23 tax herein imposed by affixing such stamps to the original  
24 packages of cigarettes sold by such distributor or by placing  
25 tax imprints underneath the sealed transparent wrapper of  
26 original packages of cigarettes sold by such distributor (as

1 the case may be): (1) Prior to December 1, 1985, a discount  
2 equal to 1-2/3% of the amount of the tax up to and including  
3 the first \$700,000 paid hereunder by such distributor to the  
4 Department during any such year; 1-1/3% of the next \$700,000 of  
5 tax or any part thereof, paid hereunder by such distributor to  
6 the Department during any such year; 1% of the next \$700,000 of  
7 tax, or any part thereof, paid hereunder by such distributor to  
8 the Department during any such year; and 2/3 of 1% of the  
9 amount of any additional tax paid hereunder by such distributor  
10 to the Department during any such year or (2) On and after  
11 December 1, 1985, a discount equal to 1.75% of the amount of  
12 the tax payable under this Act up to and including the first  
13 \$3,000,000 paid hereunder by such distributor to the Department  
14 during any such year and 1.5% of the amount of any additional  
15 tax paid hereunder by such distributor to the Department during  
16 any such year.

17 Two or more distributors that use a common means of  
18 affixing revenue tax stamps or that are owned or controlled by  
19 the same interests shall be treated as a single distributor for  
20 the purpose of computing the discount.

21 Cigarette manufacturers who are distributors under Section  
22 7(a) of this Act, and who place their cigarettes in original  
23 packages which are contained inside a sealed transparent  
24 wrapper, shall be required to remit the tax which they are  
25 required to collect under this Act to the Department by  
26 remitting the amount thereof to the Department by the 5th day

1 of each month, covering cigarettes shipped or otherwise  
2 delivered to points in Illinois to purchasers during the  
3 preceding calendar month, but a distributor need not remit to  
4 the Department the tax so collected by him from purchasers  
5 under this Act to the extent to which such distributor is  
6 required to remit the tax imposed by the Cigarette Tax Act to  
7 the Department with respect to the same cigarettes. All taxes  
8 upon cigarettes under this Act are a direct tax upon the retail  
9 consumer and shall conclusively be presumed to be precollected  
10 for the purpose of convenience and facility only. Cigarette  
11 manufacturers that are distributors licensed under Section  
12 7(a) of this Act and ~~Distributors~~ who place their ~~are~~  
13 ~~manufacturers of~~ cigarettes in original packages which are  
14 contained inside a sealed transparent wrapper, before  
15 delivering such cigarettes or causing such cigarettes to be  
16 delivered in this State to purchasers, shall evidence their  
17 obligation to collect and remit the tax due with respect to  
18 such cigarettes by imprinting language to be prescribed by the  
19 Department on each original package of such cigarettes  
20 underneath the sealed transparent outside wrapper of such  
21 original package, in such place thereon and in such manner as  
22 the Department may prescribe; provided (as stated  
23 hereinbefore) that this requirement does not apply when such  
24 distributor is required or authorized by the Cigarette Tax Act  
25 to place the tax imprint provided for in the last paragraph of  
26 Section 3 of that Act underneath the sealed transparent wrapper

1 of such original package of cigarettes. Such imprinted language  
2 shall acknowledge the manufacturer's collection and payment of  
3 or liability for the tax imposed by this Act with respect to  
4 such cigarettes.

5 The Department shall adopt the design or designs of the tax  
6 stamps and shall procure the printing of such stamps in such  
7 amounts and denominations as it deems necessary to provide for  
8 the affixation of the proper amount of tax stamps to each  
9 original package of cigarettes.

10 Where tax stamps are required, the Department may authorize  
11 distributors to affix revenue tax stamps by imprinting tax  
12 meter stamps upon original packages of cigarettes. The  
13 Department shall adopt rules and regulations relating to the  
14 imprinting of such tax meter stamps as will result in payment  
15 of the proper taxes as herein imposed. No distributor may affix  
16 revenue tax stamps to original packages of cigarettes by  
17 imprinting meter stamps thereon unless such distributor has  
18 first obtained permission from the Department to employ this  
19 method of affixation. The Department shall regulate the use of  
20 tax meters and may, to assure the proper collection of the  
21 taxes imposed by this Act, revoke or suspend the privilege,  
22 theretofore granted by the Department to any distributor, to  
23 imprint tax meter stamps upon original packages of cigarettes.

24 The tax hereby imposed and not paid pursuant to this  
25 Section shall be paid to the Department directly by any person  
26 using such cigarettes within this State, pursuant to Section 12

1 hereof.

2 A distributor shall not affix, or cause to be affixed, any  
3 stamp or imprint to a package of cigarettes, as provided for in  
4 this Section, if the tobacco product manufacturer, as defined  
5 in Section 10 of the Tobacco Product Manufacturers' Escrow Act,  
6 that made or sold the cigarettes has failed to become a  
7 participating manufacturer, as defined in subdivision (a)(1)  
8 of Section 15 of the Tobacco Product Manufacturers' Escrow Act,  
9 or has failed to create a qualified escrow fund for any  
10 cigarettes manufactured by the tobacco product manufacturer  
11 and sold in this State or otherwise failed to bring itself into  
12 compliance with subdivision (a)(2) of Section 15 of the Tobacco  
13 Product Manufacturers' Escrow Act.

14 (Source: P.A. 92-322, eff. 1-1-02; 92-536, eff. 6-6-02; 92-737,  
15 eff. 7-25-02; 93-22, eff. 6-20-03.)

16 (35 ILCS 135/3-10)

17 Sec. 3-10. Cigarette enforcement.

18 (a) Prohibitions. It is unlawful for any person:

19 (1) to sell or distribute in this State; to acquire,  
20 hold, own, possess, or transport, for sale or distribution  
21 in this State; or to import, or cause to be imported into  
22 this State for sale or distribution in this State:

23 (A) any cigarettes the package of which:

24 (i) bears any statement, label, stamp,  
25 sticker, or notice indicating that the

1 manufacturer did not intend the cigarettes to be  
2 sold, distributed, or used in the United States,  
3 including but not limited to labels stating "For  
4 Export Only", "U.S. Tax Exempt", "For Use Outside  
5 U.S.", or similar wording; or

6 (ii) does not comply with:

7 (aa) all requirements imposed by or  
8 pursuant to federal law regarding warnings and  
9 other information on packages of cigarettes  
10 manufactured, packaged, or imported for sale,  
11 distribution, or use in the United States,  
12 including but not limited to the precise  
13 warning labels specified in the federal  
14 Cigarette Labeling and Advertising Act, 15  
15 U.S.C. 1333; and

16 (bb) all federal trademark and copyright  
17 laws;

18 (B) any cigarettes imported into the United States  
19 in violation of 26 U.S.C. 5754 or any other federal  
20 law, or implementing federal regulations;

21 (C) any cigarettes that such person otherwise  
22 knows or has reason to know the manufacturer did not  
23 intend to be sold, distributed, or used in the United  
24 States; or

25 (D) any cigarettes for which there has not been  
26 submitted to the Secretary of the U.S. Department of

1 Health and Human Services the list or lists of the  
2 ingredients added to tobacco in the manufacture of the  
3 cigarettes required by the federal Cigarette Labeling  
4 and Advertising Act, 15 U.S.C. 1335a;

5 (2) to alter the package of any cigarettes, prior to  
6 sale or distribution to the ultimate consumer, so as to  
7 remove, conceal, or obscure:

8 (A) any statement, label, stamp, sticker, or  
9 notice described in subdivision (a)(1)(A)(i) of this  
10 Section;

11 (B) any health warning that is not specified in, or  
12 does not conform with the requirements of, the federal  
13 Cigarette Labeling and Advertising Act, 15 U.S.C.  
14 1333; or

15 (3) to affix any stamp required pursuant to this Act to  
16 the package of any cigarettes described in subdivision  
17 (a)(1) of this Section or altered in violation of  
18 subdivision (a)(2). ~~or~~

19 ~~(4) to knowingly possess, or possess for sale,~~  
20 ~~contraband cigarettes.~~

21 (b) Documentation. On the first business day of each month,  
22 each person licensed to affix the State tax stamp to cigarettes  
23 shall file with the Department, for all cigarettes imported  
24 into the United States to which the person has affixed the tax  
25 stamp in the preceding month:

26 (1) a copy of:

1           (A) the permit issued pursuant to the Internal  
2 Revenue Code, 26 U.S.C. 5713, to the person importing  
3 the cigarettes into the United States allowing the  
4 person to import the cigarettes; and

5           (B) the customs form containing, with respect to  
6 the cigarettes, the internal revenue tax information  
7 required by the U.S. Bureau of Alcohol, Tobacco and  
8 Firearms;

9           (2) a statement, signed by the person under penalty of  
10 perjury, which shall be treated as confidential by the  
11 Department and exempt from disclosure under the Freedom of  
12 Information Act, identifying the brand and brand styles of  
13 all such cigarettes, the quantity of each brand style of  
14 such cigarettes, the supplier of such cigarettes, and the  
15 person or persons, if any, to whom such cigarettes have  
16 been conveyed for resale; and a separate statement, signed  
17 by the individual under penalty of perjury, which shall not  
18 be treated as confidential or exempt from disclosure,  
19 separately identifying the brands and brand styles of such  
20 cigarettes; and

21           (3) a statement, signed by an officer of the  
22 manufacturer or importer under penalty of perjury,  
23 certifying that the manufacturer or importer has complied  
24 with:

25           (A) the package health warning and ingredient  
26 reporting requirements of the federal Cigarette

1 Labeling and Advertising Act, 15 U.S.C. 1333 and 1335a,  
2 with respect to such cigarettes; and

3 (B) the provisions of Exhibit T of the Master  
4 Settlement Agreement entered in the case of People of  
5 the State of Illinois v. Philip Morris, et al. (Circuit  
6 Court of Cook County, No. 96-L13146), including a  
7 statement indicating whether the manufacturer is, or  
8 is not, a participating tobacco manufacturer within  
9 the meaning of Exhibit T.

10 (c) Administrative sanctions.

11 (1) Upon finding that a distributor or a person has  
12 committed any of the acts prohibited by subsection (a),  
13 knowing or having reason to know that he or she has done  
14 so, or has failed to comply with any requirement of  
15 subsection (b), the Department may revoke or suspend the  
16 license or licenses of any distributor pursuant to the  
17 procedures set forth in Section 6 and impose on the  
18 distributor, or on the person, a civil penalty in an amount  
19 not to exceed the greater of 500% of the retail value of  
20 the cigarettes involved or \$5,000.

21 (2) Cigarettes that are acquired, held, owned,  
22 possessed, transported in, imported into, or sold or  
23 distributed in this State in violation of this Section  
24 shall be deemed contraband under this Act and are subject  
25 to seizure and forfeiture as provided in this Act, and all  
26 such cigarettes seized and forfeited shall be destroyed or

1        maintained and used in an undercover capacity. Such  
2        cigarettes shall be deemed contraband whether the  
3        violation of this Section is knowing or otherwise.

4        (d) Unfair trade practices. In addition to any other  
5        penalties provided for in this Act, a ~~A~~ violation of subsection  
6        (a) or subsection (b) of this Section shall constitute an  
7        unlawful practice as provided in the Consumer Fraud and  
8        Deceptive Business Practices Act.

9        (d-1) Retailers shall not be liable under subsections  
10       (c)(1) and (d) of this Section for unknowingly possessing,  
11       selling, or distributing to consumers or users cigarettes  
12       identified in subsection (a)(1) of this Section if the  
13       cigarettes possessed, sold, or distributed by the retailer were  
14       obtained from a distributor licensed under this Act or the  
15       Cigarette Tax Act.

16        (e) Unfair cigarette sales. For purposes of the Trademark  
17        Registration and Protection Act and the Counterfeit Trademark  
18        Act, cigarettes imported or reimported into the United States  
19        for sale or distribution under any trade name, trade dress, or  
20        trademark that is the same as, or is confusingly similar to,  
21        any trade name, trade dress, or trademark used for cigarettes  
22        manufactured in the United States for sale or distribution in  
23        the United States shall be presumed to have been purchased  
24        outside of the ordinary channels of trade.

25        (f) General provisions.

26        (1) This Section shall be enforced by the Department;

1 provided that, at the request of the Director of Revenue or  
2 the Director's duly authorized agent, the State police and  
3 all local police authorities shall enforce the provisions  
4 of this Section. The Attorney General has concurrent power  
5 with the State's Attorney of any county to enforce this  
6 Section.

7 (2) For the purpose of enforcing this Section, the  
8 Director of Revenue and any agency to which the Director  
9 has delegated enforcement responsibility pursuant to  
10 subdivision (f)(1) may request information from any State  
11 or local agency and may share information with and request  
12 information from any federal agency and any agency of any  
13 other state or any local agency of any other state.

14 (3) In addition to any other remedy provided by law,  
15 including enforcement as provided in subdivision (a)(1),  
16 any person may bring an action for appropriate injunctive  
17 or other equitable relief for a violation of this Section;  
18 actual damages, if any, sustained by reason of the  
19 violation; and, as determined by the court, interest on the  
20 damages from the date of the complaint, taxable costs, and  
21 reasonable attorney's fees. If the trier of fact finds that  
22 the violation is flagrant, it may increase recovery to an  
23 amount not in excess of 3 times the actual damages  
24 sustained by reason of the violation.

25 (g) Definitions. As used in this Section:

26 "Importer" means that term as defined in 26 U.S.C. 5702(1).

1 "Package" means that term as defined in 15 U.S.C. 1332(4).

2 (h) Applicability.

3 (1) This Section does not apply to:

4 (A) cigarettes allowed to be imported or brought  
5 into the United States for personal use; and

6 (B) cigarettes sold or intended to be sold as  
7 duty-free merchandise by a duty-free sales enterprise  
8 in accordance with the provisions of 19 U.S.C. 1555(b)  
9 and any implementing regulations; except that this  
10 Section shall apply to any such cigarettes that are  
11 brought back into the customs territory for resale  
12 within the customs territory.

13 (2) The penalties provided in this Section are in  
14 addition to any other penalties imposed under other  
15 provision of law.

16 (Source: P.A. 95-1053, eff. 1-1-10.)

17 (35 ILCS 135/4) (from Ch. 120, par. 453.34)

18 Sec. 4. Distributor's license. A distributor maintaining a  
19 place of business in this State, if required to procure a  
20 license or allowed to obtain a permit as a distributor under  
21 the Cigarette Tax Act, need not obtain an additional license or  
22 permit under this Act, but shall be deemed to be sufficiently  
23 licensed or registered by virtue of his being licensed or  
24 registered under the Cigarette Tax Act.

25 Every distributor maintaining a place of business in this

1 State, if not required to procure a license or allowed to  
2 obtain a permit as a distributor under the Cigarette Tax Act,  
3 shall make a verified application to the Department (upon a  
4 form prescribed and furnished by the Department) for a license  
5 to act as a distributor under this Act. In completing such  
6 application, the applicant shall furnish such information as  
7 the Department may reasonably require.

8 The annual license fee payable to the Department for each  
9 distributor's license shall be \$250. The purpose of such annual  
10 license fee is to defray the cost, to the Department, of  
11 serializing cigarette tax stamps. The applicant for license  
12 shall pay such fee to the Department at the time of submitting  
13 the application for license to the Department.

14 Such applicant shall file, with his application, a joint  
15 and several bond. Such bond shall be executed to the Department  
16 of Revenue, with good and sufficient surety or sureties  
17 residing or licensed to do business within the State of  
18 Illinois, in the amount of \$2,500, conditioned upon the true  
19 and faithful compliance by the licensee with all of the  
20 provisions of this Act. Such bond, or a reissue thereof, or a  
21 substitute therefor, shall be kept in effect during the entire  
22 period covered by the license. A separate application for  
23 license shall be made, a separate annual license fee paid, and  
24 a separate bond filed, for each place of business at or from  
25 which the applicant proposes to act as a distributor under this  
26 Act and for which the applicant is not required to procure a

1 license or allowed to obtain a permit as a distributor under  
2 the Cigarette Tax Act.

3 The following are ineligible to receive a distributor's  
4 license under this Act:

5 (1) a person who is not of good character and  
6 reputation in the community in which he resides;

7 (2) a person who has been convicted of a felony under  
8 any Federal or State law, if the Department, after  
9 investigation and a hearing, if requested by the applicant,  
10 determines that such person has not been sufficiently  
11 rehabilitated to warrant the public trust;

12 (3) a corporation, if any officer, manager or director  
13 thereof, or any stockholder or stockholders owning in the  
14 aggregate more than 5% of the stock of such corporation,  
15 would not be eligible to receive a license hereunder for  
16 any reason;~~;~~

17 (4) a person, or any person who owns more than 15  
18 percent of the ownership interests in a person or a related  
19 party who:

20 (a) owes, at the time of application, any ~~\$500 or~~  
21 ~~more in~~ delinquent cigarette taxes that have been  
22 determined by law to be due and unpaid, unless the  
23 license applicant has entered into an agreement  
24 approved by the Department to pay the amount due;

25 (b) had a license under this Act revoked within the  
26 past 2 years by the Department for ~~willful~~ misconduct

1 relating to stolen or contraband cigarettes or has been  
2 convicted of a State or federal crime, punishable by  
3 imprisonment of one year or more, relating to stolen or  
4 contraband cigarettes;

5 (c) ~~is a distributor who~~ manufactures cigarettes, whether in this State or out of this State, and who is  
6 neither (i) a participating manufacturer as defined in  
7 subsection II(jj) of the "Master Settlement Agreement"  
8 as defined in Sections 10 of the Tobacco Products  
9 Manufacturers' Escrow Act and the Tobacco Products  
10 Manufacturers' Escrow Enforcement Act of 2003 (30 ILCS  
11 168/10 and 30 ILCS 167/10); nor (ii) in full compliance  
12 with Tobacco Products Manufacturers' Escrow Act and  
13 the Tobacco Products Manufacturers' Escrow Enforcement  
14 Act of 2003 (30 ILCS 168/ and 30 ILCS 167/);

15 (d) has been found by the Department, after notice  
16 and a hearing, to have ~~willfully~~ imported or caused to  
17 be imported into the United States for sale or  
18 distribution any cigarette in violation of 19 U.S.C.  
19 1681a;

20 (e) has been found by the Department, after notice  
21 and a hearing, to have ~~willfully~~ imported or caused to  
22 be imported into the United States for sale or  
23 distribution or manufactured for sale or distribution  
24 in the United States any cigarette that does not fully  
25 comply with the Federal Cigarette Labeling and  
26

1 Advertising Act (15 U.S.C. 1331, et seq.); or

2 (f) has been found by the Department, after notice  
3 and a hearing, to have ~~willfully~~ made a material false  
4 statement in the application or has ~~willfully~~ failed to  
5 produce records required to be maintained by this Act.

6 Upon approval of such application and bond and payment of  
7 the required annual license fee, the Department shall issue a  
8 license to the applicant. Such license shall permit the  
9 applicant to engage in business as a distributor at or from the  
10 place shown in his application. All licenses issued by the  
11 Department under this Act shall be valid for not to exceed one  
12 year after issuance unless sooner revoked, canceled or  
13 suspended as in this Act provided. No license issued under this  
14 Act is transferable or assignable. Such license shall be  
15 conspicuously displayed at the place of business for which it  
16 is issued.

17 No distributor licensee acquires any vested interest or  
18 compensable property right in a license issued under this Act.

19 A licensed distributor shall notify the Department of any  
20 change in the information contained on the application form,  
21 including any change in ownership, and shall do so within 30  
22 days after any such change.

23 Any person aggrieved by any decision of the Department  
24 under this Section may, within 20 days after notice of the  
25 decision, protest and request a hearing. Upon receiving a  
26 request for a hearing, the Department shall give notice to the

1 person requesting the hearing of the time and place fixed for  
2 the hearing and shall hold a hearing in conformity with the  
3 provisions of this Act and then issue its final administrative  
4 decision in the matter to that person. In the absence of a  
5 protest and request for a hearing within 20 days, the  
6 Department's decision shall become final without any further  
7 determination being made or notice given.

8 (Source: P.A. 95-1053, eff. 1-1-10; revised 4-17-09.)

9 (35 ILCS 135/4d new)

10 Sec. 4d. Sales of cigarettes to and by retailers. In-state  
11 makers, manufacturers, or fabricators licensed as distributors  
12 under Section 4 of this Act and out-of-state makers,  
13 manufacturers, or fabricators holding permits under Section 7  
14 of this Act may not sell original packages of cigarettes to  
15 retailers. A retailer may sell only original packages of  
16 cigarettes obtained from licensed distributors other than  
17 in-state makers, manufacturers, or fabricators licensed as  
18 distributors under Section 4 of this Act and out-of-state  
19 makers, manufacturers, or fabricators holding permits under  
20 Section 7 of this Act.

21 (35 ILCS 135/7) (from Ch. 120, par. 453.37)

22 Sec. 7. Distributor's permits.

23 (a) The Department may, in its discretion, upon  
24 application, issue permits authorizing the collection of the

1 tax herein imposed by those out-of-State cigarette  
2 manufacturers who are not required to be licensed as  
3 distributors of cigarettes in this State, but who elect to  
4 qualify under this Act as distributors of cigarettes in this  
5 State, and who, to the satisfaction of the Department, furnish  
6 adequate security to insure collection and payment of the tax,  
7 provided that any such permit shall extend only to cigarettes  
8 which such permittee manufacturer places in original packages  
9 that are contained inside a sealed transparent wrapper, and  
10 provided that no such permit shall be issued under this Act to  
11 such a manufacturer who has obtained the permit provided for in  
12 Section 4b(a) of the Cigarette Tax Act. Such distributor shall  
13 be issued, without charge, a permit to collect such tax in such  
14 manner, and subject to such reasonable regulations and  
15 agreements as the Department shall prescribe. When so  
16 authorized, it shall be the duty of such distributor to collect  
17 the tax upon all cigarettes which he delivers (or causes to be  
18 delivered) within this State to licensed distributors  
19 ~~purchasers~~, in the same manner and subject to the same  
20 requirements as a distributor maintaining a place of business  
21 within this State. Such permit shall be in such form as the  
22 Department may prescribe and shall not be transferable or  
23 assignable.

24 The following are ineligible to receive a distributor's  
25 permit under this Act:

26 (1) a person who is not of good character and reputation in

1 the community in which he resides;

2 (2) a person who has been convicted of a felony under any  
3 Federal or State law, if the Department, after investigation  
4 and a hearing, if requested by the applicant, determines that  
5 such person has not been sufficiently rehabilitated to warrant  
6 the public trust;

7 (3) a corporation, if any officer, manager or director  
8 thereof, or any stockholder or stockholders owning in the  
9 aggregate more than 5% of the stock of such corporation, would  
10 not be eligible to receive a permit under this Act for any  
11 reason.

12 With respect to cigarettes which come within the scope of  
13 such a permit and which any such permittee delivers or causes  
14 to be delivered in Illinois to licensed distributors  
15 ~~purchasers~~, such permittee shall collect the tax imposed by  
16 this Act and shall remit such tax to the Department by the 5th  
17 day of each month for the preceding calendar month. Each such  
18 remittance shall be accompanied by a return filed with the  
19 Department on a form to be prescribed and furnished by the  
20 Department and shall disclose such information as the  
21 Department may lawfully require. The Department may promulgate  
22 rules to require that the permittee's return be accompanied by  
23 appropriate computer-generated magnetic media supporting  
24 schedule data in the format prescribed by the Department,  
25 unless, as provided by rule, the Department grants an exception  
26 upon petition of the permittee. Each such return shall be

1 accompanied by a copy of each invoice rendered by the permittee  
2 to any licensed distributor ~~purchaser~~ to whom the permittee  
3 delivered cigarettes of the type covered by the permit (or  
4 caused cigarettes of the type covered by the permit to be  
5 delivered) in Illinois during the period covered by such  
6 return.

7 Such authority and permit may be suspended, canceled or  
8 revoked when, at any time, the Department considers that the  
9 security given is inadequate, or that such tax can more  
10 effectively be collected from the person using such cigarettes  
11 in this State or through distributors located in this State, or  
12 whenever the permittee violates any provision of this Act or  
13 any lawful rule or regulation issued by the Department pursuant  
14 to this Act or is determined to be ineligible for a  
15 distributor's permit under this Act as provided in this  
16 Section, or whenever the permittee shall notify the Department  
17 in writing of his desire to have the permit canceled. The  
18 Department shall have the power, in its discretion, to issue a  
19 new permit after such suspension, cancellation or revocation,  
20 except when the person who would receive the permit is  
21 ineligible to receive a distributor's permit under this Act.

22 All permits issued by the Department under this Act shall  
23 be valid for not to exceed one year after issuance unless  
24 sooner revoked, canceled or suspended as in this Act provided.

25 (b) Out-of-state cigarette manufacturers who are not  
26 required to be licensed as distributors of cigarettes in this

1 State and who do not elect to obtain approval under subsection  
2 (a) to pay the tax imposed by this Act, but who elect to  
3 qualify under this Act as distributors of cigarettes in this  
4 State for purposes of shipping and delivering unstamped  
5 original packages of cigarettes into this State to licensed  
6 distributors, shall obtain a permit from the Department,  
7 provided that no such permit shall be issued under this  
8 subsection to a manufacturer who has obtained the permit  
9 provided for in Section 4b(b) of the Cigarette Tax Act. These  
10 permits shall be issued without charge in such form as the  
11 Department may prescribe and shall not be transferable or  
12 assignable.

13 The following are ineligible to receive a distributor's  
14 permit under this subsection:

15 (1) a person who is not of good character and  
16 reputation in the community in which he or she resides;

17 (2) a person who has been convicted of a felony under  
18 any federal or State law, if the Department, after  
19 investigation and a hearing, if requested by the applicant,  
20 determines that the person has not been sufficiently  
21 rehabilitated to warrant the public trust; and

22 (3) a corporation, if any officer, manager or director  
23 thereof, or any stockholder or stockholders owning in the  
24 aggregate more than 5% of the stock of the corporation,  
25 would not be eligible to receive a permit under this Act  
26 for any reason.

1       With respect to original packages of cigarettes such  
2 permittee delivers or causes to be delivered in Illinois and  
3 distributed to the public for promotional purposes without  
4 consideration, the permittee shall pay the tax imposed by this  
5 Act by remitting the amount thereof to the Department by the  
6 5th day of each month covering cigarettes shipped or otherwise  
7 delivered in Illinois for those purposes during the preceding  
8 calendar month. The permittee, before delivering those  
9 cigarettes or causing those cigarettes to be delivered in this  
10 State, shall evidence his or her obligation to remit the taxes  
11 due with respect to those cigarettes by imprinting language to  
12 be prescribed by the Department on each original package of  
13 cigarettes, in such place thereon and in such manner also to be  
14 prescribed by the Department. The imprinted language shall  
15 acknowledge the permittee's payment of or liability for the tax  
16 imposed by this Act with respect to the distribution of those  
17 cigarettes.

18       With respect to cigarettes such permittee delivers or  
19 causes to be delivered in Illinois to Illinois licensed  
20 distributors or distributed to the public for promotional  
21 purposes, the permittee shall, by the 5th day of each month,  
22 file with the Department, a report covering cigarettes shipped  
23 or otherwise delivered in Illinois to licensed distributors or  
24 distributed to the public for promotional purposes during the  
25 preceding calendar month on a form to be prescribed and  
26 furnished by the Department and shall disclose such other

1 information as the Department may lawfully require. The  
2 Department may promulgate rules to require that the permittee's  
3 report be accompanied by appropriate computer-generated  
4 magnetic media supporting schedule data in the format  
5 prescribed by the Department, unless, as provided by rule, the  
6 Department grants an exception upon petition of the permittee.  
7 Each such report shall be accompanied by a copy of each invoice  
8 rendered by the permittee to any purchaser to whom the  
9 permittee delivered cigarettes of the type covered by the  
10 permit (or caused cigarettes of the type covered by the permit  
11 to be delivered) in Illinois during the period covered by such  
12 report.

13 Such permit may be suspended, canceled, or revoked whenever  
14 the permittee violates any provision of this Act or any lawful  
15 rule or regulation issued by the Department pursuant to this  
16 Act, is determined to be ineligible for a distributor's permit  
17 under this Act as provided in this Section, or notifies the  
18 Department in writing of his or her desire to have the permit  
19 canceled. The Department shall have the power, in its  
20 discretion, to issue a new permit after such suspension,  
21 cancellation, or revocation, except when the person who would  
22 receive the permit is ineligible to receive a distributor's  
23 permit under this Act.

24 All permits issued by the Department under this Act shall  
25 be valid for not to exceed one year after issuance unless  
26 sooner revoked, canceled, or suspended as in this Act provided.

1 (Source: P.A. 79-387.)

2 (35 ILCS 135/24) (from Ch. 120, par. 453.54)

3 Sec. 24. Any duly authorized employee of the Department may  
4 arrest without warrant any person committing in his presence a  
5 violation of any of the provisions of this Act, and may without  
6 a search warrant seize any original packages of contraband  
7 cigarettes ~~not tax stamped or tax imprinted underneath the~~  
8 ~~sealed transparent wrapper of such original packages in~~  
9 ~~accordance with the provisions of this Act~~ and any vending  
10 device in which such packages may be found, and such original  
11 packages or vending devices so seized shall be subject to  
12 confiscation and forfeiture as hereinafter provided.

13 (Source: Laws 1953, p. 265.)

14 (35 ILCS 135/25) (from Ch. 120, par. 453.55)

15 Sec. 25. After seizing any original packages of cigarettes,  
16 or cigarette vending devices, as provided in Section 24 of this  
17 Act, the Department shall hold a hearing and shall determine  
18 whether such original packages of cigarettes, at the time of  
19 their seizure by the Department, were contraband cigarettes ~~not~~  
20 ~~tax stamped or tax imprinted underneath the sealed transparent~~  
21 ~~wrapper of such original packages in accordance with this Act,~~  
22 or whether such cigarette vending devices, at the time of their  
23 seizure by the Department, contained original packages of  
24 contraband cigarettes ~~not tax stamped or tax imprinted~~

1 ~~underneath the sealed transparent wrapper of such original~~  
2 ~~packages as required by this Act.~~ The Department shall give not  
3 less than 7 days' notice of the time and place of such hearing  
4 to the owner of such property if he is known, and also to the  
5 person in whose possession the property so taken was found, if  
6 such person is known and if such person in possession is not  
7 the owner of said property. In case neither the owner nor the  
8 person in possession of such property is known, the Department  
9 shall cause publication of the time and place of such hearing  
10 to be made at least once in each week for 3 weeks successively  
11 in a newspaper of general circulation in the county where such  
12 hearing is to be held.

13 If, as the result of such hearing, the Department shall  
14 determine that the original packages of cigarettes seized were  
15 at the time of seizure contraband cigarettes ~~not tax stamped or~~  
16 ~~tax imprinted underneath the sealed transparent wrapper of such~~  
17 ~~original packages as required by this Act,~~ or that any  
18 cigarette vending device at the time of its seizure contained  
19 original packages of contraband cigarettes ~~not tax stamped or~~  
20 ~~tax imprinted underneath the sealed transparent wrapper of such~~  
21 ~~original packages as required by this Act,~~ the Department shall  
22 enter an order declaring such original packages of cigarettes  
23 or such cigarette vending devices confiscated and forfeited to  
24 the State, and to be held by the Department for disposal by it  
25 as provided in Section 27 of this Act. The Department shall  
26 give notice of such order to the owner of such property if he

1 is known, and also to the person in whose possession the  
2 property so taken was found, if such person is known and if  
3 such person in possession is not the owner of said property. In  
4 case neither the owner nor the person in possession of such  
5 property is known, the Department shall cause publication of  
6 such order to be made at least once in each week for 3 weeks  
7 successively in a newspaper of general circulation in the  
8 county where such hearing was held.

9 (Source: P.A. 76-685.)

10 (35 ILCS 135/25a) (from Ch. 120, par. 453.55a)

11 Sec. 25a. Possession of more than 100 original packages of  
12 contraband cigarettes; penalty. With the exception of licensed  
13 distributors or transporters, as defined in Section 9c of the  
14 Cigarette Tax Act, possessing unstamped original packages of  
15 cigarettes, and licensed distributors possessing original  
16 packages of cigarettes that bear a tax stamp of another state  
17 or taxing jurisdiction, anyone possessing more than 100  
18 packages of contraband cigarettes contained in original  
19 packages is ~~which are not tax stamped as required by this Act,~~  
20 ~~or which are improperly tax stamped, shall be liable to pay, to~~  
21 the Department for deposit into ~~in~~ the Tax Compliance and  
22 Administration Fund ~~State Treasury~~, a penalty of \$25 ~~\$15~~ for  
23 each such package of cigarettes in excess of 100 packages,  
24 unless reasonable cause can be established by the person upon  
25 whom the penalty is imposed. Reasonable cause shall be

1 determined in each situation in accordance with rules adopted  
2 by the Department. The provisions of the Uniform Penalty and  
3 Interest Act do not apply to this Section. ~~Such penalty may be~~  
4 ~~recovered by the Department in a civil action.~~

5 (Source: P.A. 83-1428.)

6 (35 ILCS 135/25b)

7 Sec. 25b. Possession of not less than 10 and not more than  
8 100 original packages not tax stamped or improperly tax  
9 stamped; penalty. With the exception of licensed distributors  
10 and transporters, as defined in Section 9c of the Cigarette Tax  
11 Act, possessing unstamped packages of cigarettes, and licensed  
12 distributors possessing original packages of cigarettes that  
13 bear a tax stamp of another state or taxing jurisdiction,  
14 anyone possessing not less than 10 and not more than 100  
15 packages of contraband cigarettes contained in original  
16 packages ~~that are not tax stamped as required by this Act, or~~  
17 ~~that are improperly tax stamped,~~ is liable to pay to the  
18 Department, for deposit into the Tax Compliance and  
19 Administration Fund, a penalty of \$20 ~~\$10~~ for each such package  
20 of cigarettes, unless reasonable cause can be established by  
21 the person upon whom the penalty is imposed. Reasonable cause  
22 shall be determined in each situation in accordance with rules  
23 adopted by the Department. Any person who purchases and  
24 possesses a total of 9 or fewer original packages of unstamped  
25 cigarettes per month is exempt from the penalties of this

1 Section. The provisions of the Uniform Penalty and Interest Act  
2 do not apply to this Section.

3 (Source: P.A. 92-322, eff. 1-1-02.)

4 (35 ILCS 135/30) (from Ch. 120, par. 453.60)

5 Sec. 30. Punishment for sale or possession of unstamped  
6 packages of cigarettes, other than by a licensed distributor or  
7 transporter.

8 (a) Possession or sale of more than 9 but less than 101  
9 unstamped packages of cigarettes. With the exception of  
10 licensed distributors or transporters, as defined in Section 9c  
11 of the Cigarette Tax Act, any person who has in his or her  
12 possession or sells more than 9 but less than 101 original  
13 packages of contraband cigarettes is guilty of a Class A  
14 misdemeanor.

15 (b) Possession or sale of more than 100 but less than 251  
16 unstamped packages of cigarettes. With the exception of  
17 licensed distributors or transporters, as defined in Section 9c  
18 of the Cigarette Tax Act, any person who has in his or her  
19 possession or sells more than 100 but less than 251 original  
20 packages of contraband cigarettes is guilty of a Class A  
21 misdemeanor for the first offense and a Class 4 felony for each  
22 subsequent offense.

23 (c) Possession or sale of more than 250 but less than 1,001  
24 unstamped packages of cigarettes. With the exception of  
25 licensed distributors or transporters, as defined in Section 9c

1 of the Cigarette Tax Act, any person who has in his or her  
2 possession or sells more than 250 but less than 1,001 original  
3 packages of contraband cigarettes is guilty of a Class 4  
4 felony.

5 (d) Possession or sale of more than 1,000 contraband  
6 packages of cigarettes. With the exception of licensed  
7 distributors or transporters, as defined in Section 9c of the  
8 Cigarette Tax Act, any person who has in his or her possession  
9 or sells, more than 1,000 original packages of contraband  
10 cigarettes is guilty of a Class 3 felony.

11 (e) Any person licensed as a distributor or transporter, as  
12 defined in Section 9c of the Cigarette Tax Act, who has in his  
13 or her possession or sells 100 or less original packages of  
14 contraband cigarettes is guilty of a Class A misdemeanor.

15 (f) Any person licensed as a distributor or transporter, as  
16 defined in Section 9c of the Cigarette Tax Act, who has in his  
17 or her possession or sells more than 100 original packages of  
18 contraband cigarettes is guilty of a Class 4 felony.

19 (g) Notwithstanding subsections (e) through (f), licensed  
20 distributors and transporters, as defined in Section 9c of the  
21 Cigarette Tax Act, may possess unstamped packages of  
22 cigarettes. Notwithstanding subsections (e) through (f),  
23 licensed distributors may possess cigarettes that bear a tax  
24 stamp of another state or taxing jurisdiction. Notwithstanding  
25 subsections (e) through (f), a licensed distributor may possess  
26 contraband cigarettes returned to the distributor by a retailer

1 if the distributor immediately conducts an inventory of the  
2 cigarettes being returned, the distributor and the retailer  
3 returning the contraband cigarettes sign the inventory, the  
4 distributor provides a copy of the signed inventory to the  
5 retailer, and the distributor retains the inventory in its  
6 books and records and promptly notifies the Department of  
7 Revenue.

8 (h) Notwithstanding subsections (a) through (d) of this  
9 Section, a retailer unknowingly possessing contraband  
10 cigarettes obtained from a licensed distributor or knowingly  
11 possessing contraband cigarettes obtained from a licensed  
12 distributor is not subject to penalties under this Section if  
13 the retailer, within 48 hours after discovering that the  
14 cigarettes are contraband cigarettes, excluding Saturdays,  
15 Sundays, and holidays: (i) notifies the Department and the  
16 licensed distributor from whom the cigarettes were obtained,  
17 orally and in writing, that he or she possesses contraband  
18 cigarettes obtained from a licensed distributor; (ii) places  
19 the contraband cigarettes in one or more containers and seals  
20 those containers; and (iii) places on the containers the  
21 following or similar language: "Contraband Cigarettes. Not For  
22 Sale." All contraband cigarettes in the possession of a  
23 retailer remain subject to forfeiture under the provisions of  
24 this Act.

25 ~~Any person other than a licensed distributor who sells, offers~~  
26 ~~for sale, or has in his possession with intent to sell or offer~~

1 ~~for sale, more than 100 original packages, not tax stamped or~~  
2 ~~tax imprinted underneath the sealed transparent wrapper of such~~  
3 ~~original package in accordance with this Act, shall be guilty~~  
4 ~~of a Class 4 felony.~~

5 ~~Any person other than a licensed distributor who sells,~~  
6 ~~offers for sale, or has in his possession with intent to sell~~  
7 ~~or offer for sale, 100 or fewer original packages, not tax~~  
8 ~~stamped or tax imprinted underneath the sealed transparent~~  
9 ~~wrapper of the original package in accordance with this Act, is~~  
10 ~~guilty of a Class A misdemeanor for the first offense and a~~  
11 ~~Class 4 felony for each subsequent offense.~~

12 ~~Any distributor who sells an original package of~~  
13 ~~cigarettes, not tax stamped or tax imprinted underneath the~~  
14 ~~sealed transparent wrapper of such original package in~~  
15 ~~accordance with this Act, except when the sale is made under~~  
16 ~~such circumstances that the tax imposed by this Act may not~~  
17 ~~legally be levied because of the Constitution or laws of the~~  
18 ~~United States, shall be guilty of a Class 3 felony.~~

19 (Source: P.A. 92-322, eff. 1-1-02.)

20 (35 ILCS 135/3-15 rep.)

21 Section 20. The Cigarette Use Tax Act is amended by  
22 repealing Section 3-15.

23 Section 25. The Prevention of Cigarette Sales to Minors Act  
24 is amended by changing Sections 2, 5, 6, 7, 8, and 10 and by

1 adding Section 33 as follows:

2 (720 ILCS 678/2)

3 (This Section may contain text from a Public Act with a  
4 delayed effective date)

5 Sec. 2. Definitions. For the purpose of this Act:

6 "Cigarette" when used in this Act, means any roll for  
7 smoking made wholly or in part of tobacco irrespective of size  
8 or shape and whether or not the tobacco is flavored,  
9 adulterated, or mixed with any other ingredient, and the  
10 wrapper or cover of which is made of paper or any other  
11 substance or material except whole leaf tobacco.

12 "Clear and conspicuous statement" means the statement is of  
13 sufficient type size to be clearly readable by the recipient of  
14 the communication.

15 "Consumer" means an individual who acquires or seeks to  
16 acquire cigarettes for personal use.

17 "Delivery sale" means any sale of cigarettes to a consumer  
18 if:

19 (a) the consumer submits the order for such sale by  
20 means of a telephone or other method of voice transmission,  
21 the mails, or the Internet or other online service, or the  
22 seller is otherwise not in the physical presence of the  
23 buyer when the request for purchase or order is made; or

24 (b) the cigarettes are delivered by use of a common  
25 carrier, private delivery service, or the mails, or the

1 seller is not in the physical presence of the buyer when  
2 the buyer obtains possession of the cigarettes.

3 "Delivery service" means any person (other than a person  
4 that makes a delivery sale) who delivers to the consumer the  
5 cigarettes sold in a delivery sale.

6 "Department" means the Department of Revenue.

7 "Government-issued identification" means a State driver's  
8 license, State identification card, passport, a military  
9 identification or an official naturalization or immigration  
10 document, such as an alien registration recipient card  
11 (commonly known as a "green card") or an immigrant visa.

12 ~~"Legal minimum age" means the minimum age at which an~~  
13 ~~individual may legally purchase cigarettes within this State,~~  
14 ~~as determined by either State or local government.~~

15 "Mails" or "mailing" mean the shipment of cigarettes  
16 through the United States Postal Service.

17 "Out-of-state sale" means a sale of cigarettes to a  
18 consumer located outside of this State where the consumer  
19 submits the order for such sale by means of a telephonic or  
20 other method of voice transmission, the mails or any other  
21 delivery service, facsimile transmission, or the Internet or  
22 other online service and where the cigarettes are delivered by  
23 use of the mails or other delivery service.

24 "Person" means any individual, corporation, partnership,  
25 limited liability company, association, or other organization  
26 that engages in any for-profit or not-for-profit activities.

1 "Shipping package" means a container in which packs or  
2 cartons of cigarettes are shipped in connection with a delivery  
3 sale.

4 "Shipping documents" means bills of lading, air bills, or  
5 any other documents used to evidence the undertaking by a  
6 delivery service to deliver letters, packages, or other  
7 containers.

8 ~~"Within this State" means within the exterior limits of the~~  
9 ~~State of Illinois and includes all territory within these~~  
10 ~~limits owned by or ceded to the United States of America.~~

11 (Source: P.A. 95-1053, eff. 1-1-10.)

12 (720 ILCS 678/5)

13 Sec. 5. Unlawful shipment or transportation of cigarettes.

14 (a) It is unlawful for any person engaged in the business  
15 of selling cigarettes to ship or cause to be shipped any  
16 cigarettes unless the person shipping the cigarettes:

17 (1) is licensed as a distributor under either the  
18 Cigarette Tax Act, or the Cigarette Use Tax Act; or  
19 delivers the cigarettes to a distributor licensed under  
20 either the Cigarette Tax Act or the Cigarette Use Tax Act;  
21 or

22 (2) ships them to an export warehouse proprietor  
23 pursuant to Chapter 52 of the Internal Revenue Code, or an  
24 operator of a customs bonded warehouse pursuant to Section  
25 1311 or 1555 of Title 19 of the United States Code.

1           For purposes of this subsection (a), a person is a licensed  
2 distributor if the person's name appears on a list of licensed  
3 distributors published by the Illinois Department of Revenue.  
4 The term cigarette has the same meaning as defined in Section 1  
5 of the Cigarette Tax Act and Section 1 of the Cigarette Use Tax  
6 Act. Nothing in this Act prohibits a person licensed as a  
7 distributor under the Cigarette Tax Act or the Cigarette Use  
8 Tax Act from shipping or causing to be shipped any cigarettes  
9 to a registered retailer under the Retailers' Occupation Tax  
10 Act ~~and the Cigarette Tax Act~~ provided the cigarette tax or  
11 cigarette use tax has been paid.

12           (b) A common or contract carrier may transport cigarettes  
13 to any individual person in this State only if the carrier  
14 reasonably believes such cigarettes have been received from a  
15 person described in paragraph (a)(1). Common or contract  
16 carriers may make deliveries of cigarettes to licensed  
17 distributors described in paragraph (a)(1) of this Section.  
18 Nothing in this subsection (b) shall be construed to prohibit a  
19 person other than a common or contract carrier from  
20 transporting not more than 1,000 cigarettes at any one time to  
21 any person in this State.

22           (c) A common or contract carrier may not complete the  
23 delivery of any cigarettes to persons other than those  
24 described in paragraph (a)(1) of this Section without first  
25 obtaining from the purchaser an official written  
26 identification from any state or federal agency that displays

1 the person's date of birth or a birth certificate that includes  
2 a reliable confirmation that the purchaser is at least 18 years  
3 of age; that the cigarettes purchased are not intended for  
4 consumption by an individual who is younger than 18 years of  
5 age; and a written statement signed by the purchaser that  
6 certifies the purchaser's address and that the purchaser is at  
7 least 18 years of age. The statement shall also confirm: (1)  
8 that the purchaser understands that signing another person's  
9 name to the certification is illegal; (2) that the sale of  
10 cigarettes to individuals under 18 years of age is illegal; and  
11 (3) that the purchase of cigarettes by individuals under 18  
12 years of age is illegal under the laws of Illinois.

13 (d) When a person engaged in the business of selling  
14 cigarettes ships or causes to be shipped any cigarettes to any  
15 person in this State, other than in the cigarette  
16 manufacturer's or tobacco products manufacturer's original  
17 container or wrapping, the container or wrapping must be  
18 plainly and visibly marked with the word "cigarettes".

19 (e) When a peace officer of this State or any duly  
20 authorized officer or employee of the Illinois Department of  
21 Public Health or Department of Revenue discovers any cigarettes  
22 which have been or which are being shipped or transported in  
23 violation of this Section, he or she shall seize and take  
24 possession of the cigarettes, and the cigarettes shall be  
25 subject to a forfeiture action pursuant to the procedures  
26 provided under the Cigarette Tax Act or Cigarette Use Tax Act.

1 (Source: P.A. 95-1053, eff. 1-1-10.)

2 (720 ILCS 678/6)

3 (This Section may contain text from a Public Act with a  
4 delayed effective date)

5 Sec. 6. Prevention of delivery sales to minors.

6 (a) No person shall make a delivery sale of cigarettes to  
7 any individual who is under 18 years of ~~the legal minimum~~ age.

8 (b) Each person accepting a purchase order for a delivery  
9 sale shall comply with the provisions of this Act and all other  
10 laws of this State generally applicable to sales of cigarettes  
11 that occur entirely within this State, ~~including, but not~~  
12 ~~limited to, those laws imposing: (i) excise taxes; (ii) sales~~  
13 ~~taxes; (iii) license and revenue stamping requirements; and~~  
14 ~~(iv) escrow payment obligations.~~

15 (Source: P.A. 95-1053, eff. 1-1-10.)

16 (720 ILCS 678/7)

17 (This Section may contain text from a Public Act with a  
18 delayed effective date)

19 Sec. 7. Age verification and shipping requirements to  
20 prevent delivery sales to minors.

21 (a) No person, other than a delivery service, shall mail,  
22 ship, or otherwise cause to be delivered a shipping package in  
23 connection with a delivery sale unless the person:

24 (1) prior to the first delivery sale to the prospective

1 consumer, obtains from the prospective consumer a written  
2 certification which includes a statement signed by the  
3 prospective consumer that certifies:

4 (A) the prospective consumer's current address;

5 and

6 (B) that the prospective consumer is at least the  
7 legal minimum age;

8 (2) informs, in writing, such prospective consumer  
9 that:

10 (A) the signing of another person's name to the  
11 certification described in this Section is illegal;

12 (B) sales of cigarettes to individuals under 18  
13 years of ~~the legal minimum~~ age are illegal;

14 (C) the purchase of cigarettes by individuals  
15 under 18 years of ~~the legal minimum~~ age is illegal; and

16 (D) the name and identity of the prospective  
17 consumer may be reported to the state of the consumer's  
18 current address under the Act of October 19, 1949 (15  
19 U.S.C. § 375, et seq.), commonly known as the Jenkins  
20 Act;

21 (3) makes a good faith effort to verify the date of  
22 birth of the prospective consumer provided pursuant to this  
23 Section by:

24 (A) comparing the date of birth against a  
25 commercially available database; or

26 (B) obtaining a photocopy or other image of a

1 valid, government-issued identification stating the  
2 date of birth or age of the prospective consumer;

3 (4) provides to the prospective consumer a notice that  
4 meets the requirements of subsection (b);

5 (5) receives payment for the delivery sale from the  
6 prospective consumer by a credit or debit card that has  
7 been issued in such consumer's name, or by a check or other  
8 written instrument in such consumer's name; and

9 (6) ensures that the shipping package is delivered to  
10 the same address as is shown on the government-issued  
11 identification or contained in the commercially available  
12 database.

13 (b) The notice required under this Section shall include:

14 (1) a statement that cigarette sales to consumers below  
15 18 years of ~~the legal minimum~~ age are illegal;

16 (2) a statement that sales of cigarettes are restricted  
17 to those consumers who provide verifiable proof of age in  
18 accordance with subsection (a);

19 (3) a statement that cigarette sales are subject to tax  
20 under Section 2 of the Cigarette Tax Act (35 ILCS 130/2), Section 2 of the Cigarette Use Tax Act, and Section 3 of  
21 the Use Tax Act and an explanation of how the correct ~~such~~  
22 tax has been, or is to be, paid with respect to such  
23 delivery sale.  
24

25 (c) A statement meets the requirement of this Section if:

26 (1) the statement is clear and conspicuous;

1           (2) the statement is contained in a printed box set  
2 apart from the other contents of the communication;

3           (3) the statement is printed in bold, capital letters;

4           (4) the statement is printed with a degree of color  
5 contrast between the background and the printed statement  
6 that is no less than the color contrast between the  
7 background and the largest text used in the communication;  
8 and

9           (5) for any printed material delivered by electronic  
10 means, the statement appears at both the top and the bottom  
11 of the electronic mail message or both the top and the  
12 bottom of the Internet website homepage.

13           (d) Each person, other than a delivery service, who mails,  
14 ships, or otherwise causes to be delivered a shipping package  
15 in connection with a delivery sale shall:

16           (1) include as part of the shipping documents a clear  
17 and conspicuous statement stating: "Cigarettes: Illinois  
18 Law Prohibits Shipping to Individuals Under 18 and Requires  
19 the Payment of All Applicable Taxes";

20           (2) use a method of mailing, shipping, or delivery that  
21 requires a signature before the shipping package is  
22 released to the consumer; and

23           (3) ensure that the shipping package is not delivered  
24 to any post office box.

25 (Source: P.A. 95-1053, eff. 1-1-10; revised 4-17-09.)

1 (720 ILCS 678/8)

2 (This Section may contain text from a Public Act with a  
3 delayed effective date)

4 Sec. 8. Registration and reporting requirements to prevent  
5 delivery sales to minors.

6 (a) Not later than the 15th day of each month, each person  
7 making a delivery sale during the previous calendar month shall  
8 file a report with the Department containing the following  
9 information: ~~Each person who makes a delivery sale of~~  
10 ~~cigarettes to a consumer located within this State shall file~~  
11 ~~with the Department for each individual sale:~~

12 (1) the seller's ~~a statement setting forth such~~  
13 ~~person's~~ name, trade name, and the address of such person's  
14 principal place of business and any other place of  
15 business; ~~and~~

16 ~~(2) not later than the tenth day of each calendar~~  
17 ~~month, a memorandum or copy of the invoice for each and~~  
18 ~~every such delivery sale made during the previous calendar~~  
19 ~~month, which includes the following information:~~

20 (2) ~~(A)~~ the name and address of the consumer to whom  
21 such delivery sale was made;

22 (3) ~~(B)~~ the brand style or brand styles of the  
23 cigarettes that were sold in such delivery sale;

24 (4) ~~(C)~~ the quantity of cigarettes that were sold in  
25 such delivery sale; ~~and~~

26 (5) ~~(D)~~ an indication of whether or not the cigarettes

1 sold in the delivery sale bore a tax stamp evidencing  
2 payment of the tax under Section 2 of the Cigarette Tax Act  
3 (35 ILCS 130/2); ~~and-~~

4 (6) such other information the Department may require.

5 (b) Each person engaged in business within this State who  
6 makes an out-of-state sale shall, for each individual sale,  
7 submit to the appropriate tax official of the state in which  
8 the consumer is located the information required in subsection  
9 (a).

10 (c) Any person that satisfies the requirements of 15 U.S.C.  
11 Section 376 shall be deemed to satisfy the requirements of  
12 subsections (a) and (b).

13 (d) The Department is authorized to disclose to the  
14 Attorney General any information received under this title and  
15 requested by the Attorney General. The Department and the  
16 Attorney General shall share with each other the information  
17 received under this title and may share the information with  
18 other federal, State, or local agencies for purposes of  
19 enforcement of this title or the laws of the federal government  
20 or of other states.

21 (e) This Section shall not be construed to impose liability  
22 upon any delivery service, or officers or employees thereof,  
23 when acting within the scope of business of the delivery  
24 service.

25 (f) The Department may establish procedures requiring  
26 electronic transmission of the information required by this

1 Section directly to the Department on forms prescribed and  
2 furnished by the Department.

3 (Source: P.A. 95-1053, eff. 1-1-10.)

4 (720 ILCS 678/10)

5 Sec. 10. Violation.

6 (a) A person who violates subsection (a), (b), or (c) of  
7 Section 5 or Section 6, 7, 8, or 9 is guilty of a Class A  
8 misdemeanor. A second or subsequent violation of subsection  
9 (a), (b), or (c) of Section 5 or Section 6, 7, 8, or 9 is a  
10 Class 4 felony.

11 (b) The Department of Revenue shall impose a civil penalty  
12 not to exceed \$5,000 on any person who violates subsection (a),  
13 (b), or (c) of Section 5 or Section 6, 7, 8, or 9. The  
14 Department of Revenue shall impose a civil penalty not to  
15 exceed \$5,000 on any person engaged in the business of selling  
16 cigarettes who ships or causes to be shipped any such  
17 cigarettes to any person in this State in violation of  
18 subsection (d) of Section 5. Civil penalties imposed and  
19 collected by the Department shall be deposited into the Tax  
20 Compliance and Administration Fund.

21 (c) All cigarettes sold or attempted to be sold in a  
22 delivery sale that does not meet the requirements of this Act  
23 shall be forfeited to the State. All cigarettes forfeited to  
24 this State under this Act shall be destroyed or maintained and  
25 used in an undercover capacity. The Department may, prior to

1 any destruction of cigarettes, permit the true holder of the  
2 trademark rights in the cigarette brand to inspect such  
3 contraband cigarettes, in order to assist the Department in any  
4 investigation regarding such cigarettes.

5 (d) Any person aggrieved by any decision of the Department  
6 of Revenue may, within 60 days after notice of that decision,  
7 protest in writing and request a hearing. The Department of  
8 Revenue shall give notice to the person of the time and place  
9 for the hearing and shall hold a hearing before it issues a  
10 final administrative decision. Absent a written protest within  
11 60 days, the Department's decision shall become final without  
12 any further determination made or notice given.

13 (e) The penalties provided for in this Section are in  
14 addition to any other penalties provided for by law.

15 (Source: P.A. 95-1053, eff. 1-1-10.)

16 (720 ILCS 678/33 new)

17 Sec. 33. Rulemaking. The Department may adopt rules to  
18 implement and administer this Act.

19 Section 90. "An Act concerning revenue", approved April 10,  
20 2009, Public Act 95-1053, is amended by changing Section 10 as  
21 follows:

22 (P.A. 95-1053, Sec. 10)

23 Sec. 10. The Cigarette Tax Act is amended by repealing

1 Section ~~Sections 9c and~~ 28.

2 (Source: P.A. 95-1053, eff. 1-1-10.)

3 Section 99. Effective date. This Act takes effect January  
4 1, 2010, except that Sections 90 and 99 take effect upon  
5 becoming law.".